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Nos. 07-1428, 08-328

Supreme Court, U.S.
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In The Supreme Court of the United States

FRANK RICCI, ET AL.,

Petitioners,

v.

JOHN DESTEFANO, KAREN DUBOIS-WALTON, THOMAS UDE, JR., TINA BURGETT, BOISE KIMBER, MALCOLM WEBER, ZELMA TIRADO, and CITY OF NEW HAVEN,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Second Circuit

JOINT APPENDIX

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Petition for Certiorari Filed May 14, 2008
Petition for Certiorari Filed September 8, 2008
Certiorari Granted January 9, 2009

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OPINIONS, JUDGMENTS AND ORDERS CONTAINED IN THE PETITION APPENDIX

The following opinions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari:

September 28, 2006 Ruling of the District Court on Parties' Cross-Motions for Summary Judgment.....5a

September 29, 2006 Judgment of The District Court.....52a

February 15, 2008 Order and Judgment of the Court of Appeals for the Second Circuit.....1a

RELEVANT DOCKET ENTRIES

United States District Court for the District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:04-cv-01109-JBA

Ricci et al v. DeStefano et al

* * *

Date Filed	#	Docket Text
07/08/2004	1	COMPLAINT against Tina Burgett, John DeStefano, Karen Dubois – Walton, Boise Kimber, City of New Haven, Zelma Tirado, Thomas Ude Jr., Malcolm Weber (Filing fee $ 150 receipt number N012896.), filed by Michael Blatchley, Greg Boivin, Gary Carbone, Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Christopher Parker, Sean Patton, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto.(Rodko, B.) (Entered: 07/12/2004)
		* * *
10/01/2004	8	ANSWER and Affirmative Defenses to Complaint by Tina Burgett, John DeStefano, Karen Dubois – Walton, Boise Kimber, City of New Haven, Zelma Tirado, Thomas Ude Jr., Malcolm Weber.(Brown, S.) (Entered: 10/04/2004)

* * *

03/30/2005 26 MOTION for Leave to File Amended Complaint by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordan, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Attachments: #1 Amended Complaint)(Malone, P.) (Entered: 04/01/2005)

* * *

05/26/2005 29 AMENDED COMPLAINT against John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven, filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetta, Mark Vendetta, Michael Blatchley, Greg Boivin, Gary Carbone.(Malone, P.) (Entered: 05/27/2005)

* * *

08/29/2005	48	*DEFENDANT'S* ANSWER to Amended Complaint with AFFIRMATIVE DEFENSES by John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven.(Roberts, Richard) (Entered: 08/29/2005)

* * *

11/04/2005	52	First MOTION for Summary Judgment by John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven.Responses due by 11/25/2005 (Attachments: # 1 Memorandum in Support # 2 Memorandum in Support # 3 Appendix # 4 Appendix)(Roberts, Richard) (Entered: 11/04/2005)
11/04/2005	53	Statement of Material Facts re 52 First MOTION for Summary Judgment filed by John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit # 9 Exhibit # 10 Exhibit # 11 Exhibit # 12 Exhibit # 13 Exhibit # 14 Exhibit # 15 Exhibit # 16 Exhibit # 17 Exhibit # 18 Exhibit # 19 Exhibit)(Roberts, Richard) (Entered: 11/04/2005)

* * *

12/19/2005	60	MOTION for Summary Judgment by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone.Responses due by 1/9/2006 (Attachments: # 1 Statement of Material Facts # 2 Statement of Material Facts Response to defendants' statement)(Torre, Karen) (Entered: 12/19/2005)
12/19/2005	61	Statement of Material Facts re 60 MOTION for Summary Judgment filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Torre, Karen) (Entered: 12/19/2005)
12/19/2005	62	EXHIBIT *Notice of manual filing* by Michael Christoforo, Ryan Divito,

Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordan, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone re 61 Statement of Material Facts,,60 MOTION for Summary Judgment. (Torre, Karen) (Entered: 12/19/2005)

* * *

12/27/2005 67 Memorandum in Opposition re 52 First MOTION for Summary Judgment filed by Michael Christoforo, Ryan Divito, Steven Durand, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Torre, Karen) (Entered: 12/27/2005)

12/27/2005 68 Memorandum in Support re 60 MOTION for Summary Judgment filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton,

Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Inferrera, L.) (Entered: 12/28/2005)

* * *

01/06/2006 72 Statement of Material Facts re 71 MOTION to Amend/Correct 61 Statement of Material Facts, *Proposed Revised Statement of Material Facts* filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetta Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Torre, Karen) (Entered: 01/06/2006)

* * *

01/11/2006 75 ORDER granting 74 Motion to Seal Volume III, Volume VI and Exhibit 43 of Volume I of 62 Exhibits. Signed by Judge Mark R. Kravitz on 1/10/06. (Inferrera, L.) (Entered: 01/13/2006)

* * *

02/03/2006	79	Statement of Material Facts re 60 MOTION for Summary Judgment filed by Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto. (Torre, Karen) (Entered: 02/03/2006)
02/03/2006	80	Statement of Material Facts re 60 MOTION for Summary Judgment, 52 First MOTION for Summary Judgment filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Torre, Karen) (Entered: 02/03/2006)
02/06/2006	81	Memorandum in Opposition re 52 First MOTION for Summary Judgment filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank

Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Torre, Karen) (Entered: 02/06/2006)

* * *

03/10/2006 89 RESPONSE re 80 Statement of Material Facts, 60 Motion for Summary Judgement filed by John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven. (Roberts, Richard) Modified on 3/13/2006 To create link to Motion # 60 (Malone, P.). (Entered: 03/10/2006)

03/10/2006 90 RESPONSE re 81 Memorandum in Opposition to Motion„ 52 First MOTION for Summary Judgment *pages 1-25 &Table of Contents* filed by John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven. (Attachments: # 1 pages 26-51# 2 Exhibit 1# 3 Exhibit 2# 4 Exhibit 3# 5 Exhibit 4# 6 Exhibit 5)(Roberts, Richard) (Entered: 03/10/2006)

* * *

06/16/2006 114 Amended RESPONSE re 60 MOTION for Summary Judgment, 52

First MOTION for Summary Judgment, 80 Statement of Material Facts, filed by John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven. (Attachments: # 1 pages 26-50# 2 pages 51-71# 3 Exhibit 1# 4 Exhibit 2# 5 Exhibit 3# 6 Exhibit 4# 7 Exhibit 5# 8 Exhibit 6# 9 Exhibit 7# 10 Exhibit 8# 11 Exhibit 9# 12 Exhibit 10# 13 Exhibit 11# 14 Exhibit 12# 15 Exhibit 13# 16 Exhibit 14# 17 Exhibit 15# 18 Exhibit 16# 19 Exhibit 17# 20 Exhibit 18# 21 Exhibit 19)(Roberts, Richard) (Entered: 06/16/2006)

* * *

07/13/2006 120 EXHIBIT Notice of Manual Filing of Exhibits VII and VIII by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone re 60 MOTION for Summary Judgment. (Malone, P.) (Entered: 07/17/2006)

* * *

07/14/2006 119 Supplemental RESPONSE re 60 Motion for Summary Judgment re 115 Memorandum in Support of Motion,,, and re: 52 Motion for Summary Judgment re 114 Response,, filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Torre, Karen) Modified on 7/17/2006 To create links to docket #'s 52 &60 Motions (Malone, P.). (Entered: 07/14/2006)

07/17/2006 121 RESPONSE re 52 Motion for Summary Judgment And 60 Motion for Summary Judgment re 119 Response, filed by John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven. (Attachments: # 1 Exhibit A)(Roberts, Richard) Modified on 7/18/2006 to create links to motion Docket #'s 52 &60 Motions (Malone, P.). (Entered: 07/17/2006)

* * *

08/04/2006 126 Memorandum in Opposition re 52 First MOTION for Summary Judgment, 118 MOTION to Preclude Plaintiffs' Proposed Submissions filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Torre, Karen) (Entered: 08/04/2006)

08/07/2006 127 REPLY to Response to 52 First MOTION for Summary Judgment *and 121 response to reply brief* filed by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetto, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. (Torre, Karen) (Entered: 08/07/2006)

08/09/2006 128 First RESPONSE re 126 Memorandum in Opposition to 52 Motion for Summary Judgment 121 Response

		118 MOTION to Preclude Plaintiffs' Proposed Submissions, 127 Reply to Response to Motion, filed by John DeStefano, Karen Dubois-Walton, Thomas Ude, Jr, Tina Burgett, Boise Kimber, Malcolm Weber, Zelma Tirado, City of New Haven. (Roberts, Richard) Modified on 8/10/2006 (Malone, P.). (Entered: 08/09/2006)
		* * *
09/28/2006	132	RULING granting 52 First MOTION for Summary Judgment, denying 60 Motion for Summary Judgment. Signed by Judge Janet Bond Arterton on 9/28/06. (Pesta, J.) (Entered: 09/29/2006)
09/29/2006	133	JUDGMENT in favor of defendants. Signed by Clerk on 9/29/06. (Pesta, J.) (Entered: 09/29/2006)
10/27/2006	134	NOTICE OF APPEAL as to 132 Ruling on Motion for Summary Judgment,, 133 Judgment by Michael Christoforo, Ryan Divito, Steven Durand, William Gambardella, Brian Jooss, James Kottage, Matthew Marcarelli, Thomas J. Michaels, Sean Patton, Christopher Parker, Frank Ricci, Edward Riordon, Kevin Roxbee, Timothy Scanlon, Benjamin Vargas, John Vendetta, Mark Vendetto, Michael Blatchley, Greg Boivin, Gary Carbone. Filing fee $ 455, receipt

number N019690. (Malone, P.) (Entered: 10/30/2006)

* * *

RELEVANT DOCKET ENTRIES

US Court of Appeals for the Second Circuit

Court of Appeals Docket #: 06-4996-cv
Nsuit : 3442 CIVIL RIGHTS – Jobs

Ricci v. DeStefano Filed 10/30/06

Appeal from: CONNECTICUT (NEW HAVEN)

* * *

10/30/06 Copy of notice of appeal and district court docket entries on behalf of APPELLANT Benjamin Vargas, Brian Jooss, Christopher Parker, Edward Riordon, ET AL , filed. [Entry date Nov 13 2006] [EA]

* * *

1/26/07 APPELLANT Benjamin Vargas, Brian Jooss, Christopher Parker, Edward Riordon, ET AL, brief FILED with proof of service. [Entry date Feb 26 2007] [EA]

* * *

3/5/07 Order FILED GRANTING motion seal document by Appellant Timothy Scanlon, Appellant James Kottage, Appellant Frank Ricci, Appellant Michael Blatchley, Appellant Greg Boivin, Appellant Gary Carbone, Appellant Michael Christoforo, Appellant Ryan Divito, Appellant Steven Durand, Appellant William Gambardella, Appellant Brian Jooss, Appellant Matthew Marcarelli, Appellant Thomas Michaels, Appellant Sean Patton, Appellant Christopher Parker, Appellant Edward Riordon, Appellant

Kevin Roxbee, Appellant Benjamin Vargas, Appellant John Vendetto, Appellant Mark Vendetto, endorsed on motion dated 2/20/2007.

Before: Hon. Sonia Sotomayor, Circuit Judge IT IS HEREBY ORDERED that the motion for leave to file Vol. III of Joint Appendix under seal is GRANTED.(TWY) [Entry date Mar 5 2007] [EA]

* * *

3/15/07 APPELLEE City of New Haven, Boise Kimber, John DeStefano, Karen Dubois-Walton, ET AL, brief filed with proof of service. [Entry date Mar 16 2007] [EA]

* * *

4/5/07 APPELLANT Benjamin Vargas, Brian Jooss, Christopher Parker, Edward Riordon, ET AL, reply brief filed with proof of service. [Entry date Apr 20 2007] [EA]

* * *

10/31/07 Bridgeport Firefighters for Merit Employment, Inc. brief filed with proof of service. [Entry date Oct 31 2007] [SC]

10/31/07 Center for Individual Rights brief filed with proof of service. [Entry date Oct 31 2007] [SC]

* * *

12/10/07 Case heard before POOLER, SACK, SOTOMAYOR, C. JJ

CD DATE: 12/10/07 [Entry date Dec 10 2007] [RD]

* * *

2/15/08 Judgment filed; judgment of the district court is AFFIRMED by detailed order of the court without opinion, filed. (RSP) [Entry date Feb 15 2008] [TM]

* * *

5/22/08 Notice of filing petition for writ of certiorari dated 5/16/08 filed. Supreme Court #: 07-1428. [Entry date May 28 2008] [EJ]

6/9/08 Judgment of the district court is AFFIRMED by published unsigned PER CURIAM opinion filed. [Entry date Jun 9 2008] [AM]

6/9/08 Judgment filed. [Entry date Jun 9 2008] [AM]

* * *

6/12/08 Order filed stating "After disposition of this appeal by summary order dated February 15, 2008, an active judge of the Court requested a poll on whether to rehear the case in banc. A poll on whether to rehear the case in banc was conducted among the active judges of the Court. After the poll was concluded, on June 9, 2008, the original three-judge panel withdrew the summary order and filed a per curiam opinion; no subsequent in banc poll has been requested. Because a majority of the court's active judges voted to deny rehearing in banc, rehearing in banc is hereby DENIED. Judges

Calabresi, Straub, Pooler, Sack, Sotomayor, Katzmann, and B.D. Parker concur in the denial of rehearing in banc. Chief Judge Jacobs and Judges Cabranes, Raggi, Wesley, Hall and Livingston dissent from the denial of rehearing en banc. With this order, Judge Katzmann is filing a concurring opinion, in which Judges Pooler, Sack, Sotomayor and B.D. Parker joins; Judge B.D. Parker is filing a concurring opinion, in which Judges Calabresi, Pooler, Sack, and Sotomayor join; and Judge Cabranes is filing a dissenting opinion, in which Chief Judge Jacobs and Judges Raggi, Wesley, Hall and Judge Livingston join. Other opinions may be filed with respect to this case, concurring or dissenting in the denial of in banc review." Before DJ, ChJ, GC, JAC, CJS, RSP, RDS, SS, RAK, BDP, RR, RCW, PWH, DAL, CJJ. [Entry date Jun 12 2008] [EJ]

6/12/08 Non-dispositive concurring opinion filed. (RAK, joined by RSP, RDS, SS and BDP, CJJ). [Entry date Jun 12 2008] [EJ]

6/12/08 Non-dispositive concurring opinion filed. (BDP, joined by GC, RSP, RDS and SS, CJJ). [Entry date Jun 12 2008] [EJ]

6/12/08 Non-dispositive dissenting opinion filed (JAC, joined by DJ, CHJ, RR, RCW, PWH, and DAL, CJJ). [Entry date Jun 12 2008] [EJ]

* * *

6/13/08 Non-dispositive concurring opinion filed (GC). [Entry date Jun 13 2008] [EJ]

* * *

6/17/08 Non-dispositive dissenting opinion filed. (DJ). [Entry date Jun 17 2008] [EJ]

* * *

9/17/08 Notice of filing petition for APPELLANT Benjamin Vargas, Brian Jooss, Christopher Parker, Edward Riordon, ET AL, filed on 9/8/08, and placed on the docket 9/11/08. Supreme Court # 08-328. [Entry date Sep 19 2008] [ML]

* * *

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September 12, 2003

Memorandum to candidates participating in the lieutenant and captain promotional examinations.

Re: Inconsistencies among resource materials

The purpose of this memorandum is to clarify the manner in which inconsistencies among resources for the promotional examinations will be dealt with in the test-development process. I/O Solutions recognizes that the diversity of resources can lead to differences in conveyance of information among authors. For this reason, I/O Solutions follows a standard process to reduce the possibility that a test item (question) is the object of conflicting information provided by various authors/editors. First, resources are analyzed to determine areas/chapters where the same type of information is being conveyed. As a general rule, we avoid developing questions concerning topic areas that do not demonstrate consensus between authors/resources. Second, all items contained in the final promotional examination are reviewed to identify items from different resources that focus on the same topic area. These items are carefully scrutinized to make sure that they are not

predicated on information contained in multiple resources that could be deemed "contradictory." Finally, all items in the promotional examination will be presented in sections based on the item's resource of origin. This practice will help create a frame of reference that may be helpful when responding to each test item. In general, all reasonable steps will be taken to develop straightforward, relevant test questions.

An appropriate example of the type of inconsistencies that may be present between sources is illustrated by the different building construction classification systems that John Norman (Fire Officer's Handbook of Tactics) and Francis Brannigan (Building Construction for the Fire Service) reference. For example, the building "types" and "classes" may not always be consistently named. To avoid confusion, questions about this material will always refer to the name of the building type rather than its number. Also, questions that deal specifically with building construction are more likely to be drawn from the building construction resource rather than a tactical resource.

It is I/O Solutions' goal to measure fundamental job knowledge of promotional candidates. I/O Solutions does assert that the reference materials chosen for inclusion in the testing process are superior job-knowledge resources in the fire industry. Subject-matter experts from the department assisted I/O Solutions in the selection of resources that are appropriate for the New Haven Fire Department. All items developed for the promotional examination will be

subject to a rigorous item review process to ensure that items accurately assess the most important knowledge areas.

Best regards,
I/O Solutions, Inc.

Cc: Tina Burgett, Director Human Resources
Noelia Marcano, Chief Examiner
Civil Service Board Commissioners (5)

VERBATIM PROCEEDINGS

CITY OF NEW HAVEN
CIVIL SERVICE COMMISSION

IN RE:
FIRE CAPTAIN AND LIEUTENANT
PROMOTIONAL EXAMS

JANUARY 22, 2004

KENNEDY MITCHELL HALL OF RECORDS
200 ORANGE STREET
NEW HAVEN, CONNECTICUT

* * *

[19] FEMALE VOICE: (indiscernible) if we used them five years ago (indiscernible)

FEMALE VOICE: Okay. I think I addressed that. You had asked if we had used them five years ago. And we had used them once before in 2000 for test development of firefighter entry-level testing.

MALE VOICE: But they didn't do this exam five years ago.

FEMALE VOICE: Right.

CHAIRPERSON SEGALOFF: But they did another exam for firefighters?

FEMALE VOICE: Correct.

CHAIRPERSON SEGALOFF: And how did the results compare, to use the words you used, the demographics – what were the results years ago? Do you [20] know?

FEMALE VOICE: (indiscernible)

MALE VOICE: Mr. Chairman, I think there's two difficulties with that. One, the firefighter's exam itself is a pass/fail exam. It's not – there's no grade. There's no scoring or rank ordering of the results of the exam –

CHAIRPERSON SEGALOFF: Oh, really?

MALE VOICE: – on a firefighter entry-level exam. So I don't know that – apart from whether or not any review of or comparison of the two was done, I can say that as part of the process every time that Human Resources and Civil Services prepares, administers, conducts and scores an examination that – a review of the examination to determine whether there is or is not a disparate or adverse impact against any ethnic, racial or gender group takes place in order to make sure that the City's selection process complies with both our Charter, which prohibits discrimination on any of those grounds, and also federal law, which requires examination of not only intentional discrimination but a process that has a discriminatory effect. And I'll talk a little bit more about that once they've gotten through the information that's on the lists that they've passed out.

[21] FEMALE VOICE: Well, I think in order for us to (indiscernible) discussion we had into context and to even know how to continue the inquiry, we need to know what is the disparity. (Indiscernible)

MALE VOICE: (indiscernible)

MS. BURGETT: If you would turn to the second page (indiscernible). What we've provided on – on the second page, what we did is we took a look at the numbers of individuals in the Fire Lieutenant examination by year and by race and Captain examination by year and by race. As you can – and then we also have given you some information about rankings.

The Fire Lieutenant examination by race – there have been three exams, 1996, 1999, 2003. The other columns tell you the number of individuals by ethnicity who have passed that particular year. I'm not showing you fail rates. In this particular case, I think it's relatively self-explanatory. There were 50 Caucasians who passed, 13 African-Americans, 6 Latino in '96. In 1999, there were 25 Caucasians who passed, 8 African-Americans, 9 Latino. In 2003, there were 26 Caucasians, 6 African-Americans and 3 Latino.

We then took a look at the ranks by race. In 1996, Caucasians were in Rank No. 1, African-[22] Americans in Rank No. 3, Latinos in Rank No. 4. In 1999, Caucasians were in Rank No. 1, African-Americans in Rank No. 5, Latinos in Rank No. 1. (sic) In 2003, Caucasians are in Rank No. 1, African-Americans are in Rank No. 13 and Latinos in Rank 26.

This is a ranking system that has been – that we're using as given to us by the court system in the last week.

MALE VOICE: Ms. Burgett, just for clarification, when you're saying – identifying the ranks, when you say on the current – as a result – on the

current Lieutenant scores, the highest African – there's an African-American in Rank 13. That's the highest rank that any African-American who took and passed the exam would be placed in?

MS. BURGETT: That is correct.

MALE VOICE: Not that all of any given race are in any particular rank.

MS. BURGETT: Right.

The Captain's examination we also did by year. We had two years to review, 1998 and 1999, for the Captain's examination. There were 35 Caucasians who passed, 7 African-Americans, 3 Latino. In 2003, there were 16 Caucasians, 3 African-American and 3 Latino.

[23] We looked at the ranks. Again, similar to Fire Lieutenant. And in 1999, Caucasians were in Rank 1, African-Americans in Rank 5 and Latino in Rank 4. In 2003, Caucasians were in Rank 1, African-Americans in Rank 15, Latino in Rank 6.

On the first page, I have given you a breakout of the demographics of the 336 members of Fire Suppression Services. There are other divisions within the Fire Department that are not included here. But we wanted to give you a breakdown of the demographics. Again, we're doing a data analysis review and we took a look at these demographics. Unless there's a –

* * *

[53] CHAIRPERSON SEGALOFF: Why don't we see what people have to say (indiscernible) about this exam? Educate ourselves.

MALE VOICE: Oh, I think that's very reasonable.

FEMALE VOICE: And then at some point hear from the public.

FEMALE VOICE: But I don't even know what the public is thinking right now.

CHAIRPERSON SEGALOFF: Well, that's what I just said, Francine. We have to educate ourselves and let everybody get a chance to speak. My only question is (indiscernible)

FEMALE VOICE: Why don't we [54] (indiscernible)

CHAIRPERSON SEGALOFF: That's my question for everybody here. Should we – this meeting was not a public meeting, not a meeting for public input. This is like the City Plan meetings that we go to sometimes where it's not open to the public and the commission meets and doesn't take public testimony.

So – and no one has any of this information. I just think, while it's unfortunate that everyone is here, that it's going to much more of an educated response if everybody – I don't know what you could give to the public. But they've sat here. Give them whatever we're permitted to give them.

FEMALE VOICE: Can they have (indiscernible)

MALE VOICE: Copies of everything that were distributed to the commissioners –

CHAIRPERSON SEGALOFF: Well, give them everything. And then we have a meeting –

FEMALE VOICE: That way they've got (indiscernible)

CHAIRPERSON SEGALOFF: – whenever, next week, or a meeting as soon as we can. And anyone who wants to – they've got all (indiscernible) we'll go all [55] night. A limited period of time for everybody who wants to speak. And then go from there.

FEMALE VOICE: I feel like we should have some people speak tonight.

CHAIRPERSON SEGALOFF: Well, what are you going to do, Francine, about – I know they're here. Are we going to let the same people come back and speak again or are those that are going to speak today don't come back? We can't accommodate everybody. I mean do you want to do that? But I would think they might be better off, the public, listening first to what the experts have to say and then maybe their response might be – what they have to say is more meaningful. I don't – if people want to speak, it's okay. But I don't want to bring the same speakers back again in a week. If you speak now –

FEMALE VOICE: I think it's good to have a few different groups to speak tonight to hear what a few different groups – it doesn't have to be every single person. But it would give me a feeling of what's going on. I still am not sure –

MALE VOICE: I guess I'm not clear what it is you're going to be asking – looking for them to provide you with information about, other than their [56] subjective – someone who took the exam, their subjective experience as one of the however many people who took it. Or if it's someone who didn't take it – I don't know. Maybe there are, you know, Title VII experts that are here. I'm not about to say that there aren't. But they – even they would not have had the data upon which to form a conclusion until this evening.

FEMALE VOICE: I just think if we listen to the company first and then listen to the public, we'll be able to understand better what the public is trying to tell us after the consultant (indiscernible).

MALE VOICE: (Indiscernible) is sitting out here right now (indiscernible). And I think the Chair should recognize (indiscernible)

MALE VOICE: Okay. I said before I'm not –

MALE VOICE: I know. But you're (Indiscernible)

FEMALE VOICE: Like I said, I think that we should start with the company. That's my position.

CHAIRPERSON SEGALOFF: Well, are we agreed that we're going to have a Special Meeting to take testimony?

FEMALE VOICE: A public hearing?

[57] CHAIRPERSON SEGALOFF: We're agreed that that's what we're going to do. The only question is do we start with it now or wait until –

FEMALE VOICE: Why don't we? I mean (indiscernible)

CHAIRPERSON SEGALOFF: (Indiscernible) We'll limit the amount of speakers. We'll limit the amount that each speaker can speak. And –

FEMALE VOICE: Right.

CHAIRPERSON SEGALOFF: We're going to do our best; that if you speak now, don't – we're going to limit it. You're going to be at the very end of the list next time, if we can fit you in.

FEMALE VOICE: And we're agreeing to meet again when?

CHAIRPERSON SEGALOFF: Well, we've got to get a time.

FEMALE VOICE: We have to get (indiscernible)

MALE VOICE: And at that time, people should register that they wish to speak in advance –

CHAIRPERSON SEGALOFF: They'll have to sign up.

MALE VOICE: – and we'll have complete [58] rules on it. But I think we should hear from a limited number of speakers tonight –

FEMALE VOICE: Yes.

MALE VOICE: These people came. They have a right to speak.

FEMALE VOICE: Yeah.

CHAIRPERSON SEGALOFF: All right. We're going to – we'll do that. Now –

FEMALE VOICE: (Indiscernible)

CHAIRPERSON SEGALOFF: What's a reasonable period of time for each speaker?

FEMALE VOICE: Three minutes.

CHAIRPERSON SEGALOFF: Okay.

FEMALE VOICE: Five minutes. Three minutes. (indiscernible)

FEMALE VOICE: Yeah. They should state their name –

FEMALE VOICE: We're not going to be able to do a transcript –

FEMALE VOICE: Right.

FEMALE VOICE: – as we were planning for the public hearing.

FEMALE VOICE: And they can stand here so (indiscernible)

[59] FEMALE VOICE: Yeah. They'll have to stand right here in front of the mike.

MALE VOICE: (Indiscernible)

MALE VOICE: How long are we giving each speaker? Five minutes?

FEMALE VOICE: We will not able to transcribe this –

MALE VOICE: (indiscernible) time in between.

CHAIRPERSON SEGALOFF: We'll go for an hour.

MALE VOICE: That's about ten speakers.

CHAIRPERSON SEGALOFF: Well, we'll do the best we can.

All right. Here's – I don't know if we're going to make it in the form of a motion.

FEMALE VOICE: Yeah. I make a motion that representative – ten? Is that what we decided? Or how many –

MALE VOICE: Well, ten will run it down to about an hour.

FEMALE VOICE: Okay. About eight?

CHAIRPERSON SEGALOFF: Ten is good.

FEMALE VOICE: Okay. Ten people will be [60] allowed to speak today. We will – before our formal public hearing, which will be in the near future. They would be limited to an amount of three minutes each. State your name and title and sign in here when you come up to speak. And be very succinct and let us know what your opinion is on this matter.

MALE VOICE: Make clear that they cannot speak –

CHAIRPERSON SEGALOFF: Here's what we're going to do, everybody. We're going to have another meeting as well. What we're saying is if you speak tonight, we're not promising you – we're doing this as we go along – that at the next meeting, which is a public hearing, that you're going to get a chance, a second bite at the apple. We're going to make sure first that everybody gets a – do our very best that everybody gets a chance to speak. Okay? So if you get up tonight, we can't commit to you that you'll get the opportunity to speak at the next meeting.

In terms of selecting people, I mean I don't know that anybody represents any – I don't – let's do our best to – if there are people who feel – and I guess if there's a representative of some group, I guess we'd do our best to get you up there.

[61] MALE VOICE: Yeah. Can I ask a question?

CHAIRPERSON SEGALOFF: Sure.

MALE VOICE: You said if we speak tonight – my name is Patrick (indiscernible). If we speak tonight, we may not be able to speak (indiscernible). At that meeting, is it the commission's intention to have I/O Solutions here to deal with questions with – you know, in regard to the exams? That's what I'm gathering.

CHAIRPERSON SEGALOFF: That's our intention. And it's also our intention –

FEMALE VOICE: We'll do our best.

MALE VOICE: And/or is it your – (indiscernible) anything being asked for any type of (indiscernible) evaluation study (indiscernible)

CHAIRPERSON SEGALOFF: I think if we're going – one step at a time. I think our first step is just hearing all – (indiscernible) we're going to start with the group that prepared it. I would like to – and I (indiscernible) as we go along here – bring in an expert, someone else who gives these tests, another – and have them review what was done and give us their opinion. I don't know how the board feels. But it's – at this point in time, the plan is to bring it to the next open meeting. Everyone who is there, try to give [62] them an opportunity to speak. And have the person from the testing agency. And

possibly – we'll talk about – other sources maybe to speak on the issue of the test.

MALE VOICE: I would prefer to wait until I (indiscernible).

MALE VOICE: The only other thing I would add is we – we will have a Court Reporter at the next one, which will allow us to do a word-for-word transcript of what is said, which as best we try I can't say we will be able to have a (indiscernible)

CHAIRPERSON SEGALOFF: The other thing that I would state is that I think (indiscernible) anybody wants to send a letter giving a point of view, information, whatever they think is relevant, I can just assure you we'll make it part of our record and we'll read every letter as just a matter of (indiscernible)

MALE VOICE: (Indiscernible)

CHAIRPERSON SEGALOFF: Is there any reason not to (indiscernible) what was handed out?

FEMALE VOICE: Yeah. We'll make copies.

MALE VOICE: We have copies. I don't know that we have enough for everybody. But we can do a separate list for people who would like them. I think there may be some leaders of some organizations that are [63] present tonight that might be able to give them to their leaders. I would request that only because administratively it would be easier for everybody. But, absolutely, any – what was passed

out tonight it was our intention would become – would be public. It was not distributed prior because we didn't think that would be appropriate. But –

CHAIRPERSON SEGALOFF: All right. Let's –

FEMALE VOICE: (Indiscernible)

CHAIRPERSON SEGALOFF: We're going to have a cut-off date for the letters. What's our – well, we haven't set a date yet for our next meeting.

FEMALE VOICE: Right.

CHAIRPERSON SEGALOFF: Let's do that first. Okay?

FEMALE VOICE: (indiscernible) a motion (indiscernible)

FEMALE VOICE: We have a motion. There is no second yet.

MALE VOICE: I'll second. I'll –

CHAIRPERSON SEGALOFF: Read the motion.

MALE VOICE: Well, read the motion.

FEMALE VOICE: The motion – motion that ten people will be allowed to speak today, limited to [64] three minutes each. State their name, title, sign the sign-up sheet and give opinions.

CHAIRPERSON SEGALOFF: Okay.

MALE VOICE: I'll second.

CHAIRPERSON SEGALOFF: All in favor?

VOICES: Aye.

CHAIRPERSON SEGALOFF: Let's try to set a date now first so people – for our next – for our Special Meeting. What are our time frames?

FEMALE VOICE: How long do we think it's going to take to get this I/O –

MALE VOICE: (indiscernible)

FEMALE VOICE: I think the sooner the better.

MALE VOICE: (Indiscernible)

CHAIRPERSON SEGALOFF: Okay. Let's set a date. Then we'll –

FEMALE VOICE: Okay. I'm not available on Monday and Wednesday –

CHAIRPERSON SEGALOFF: Next week? Did you want to (indiscernible) next week?

MALE VOICE: Yeah.

FEMALE VOICE: Yeah. I think we should do it the sooner the better.

[65] CHAIRPERSON SEGALOFF: Well, we've got to get this I/O Solutions here.

FEMALE VOICE: We have to consultant. And I would not want to guarantee that Tuesday (indiscernible)

FEMALE VOICE: How about Thursday?

FEMALE VOICE: (Indiscernible) pick a few tentative – a few tentative dates –

FEMALE VOICE: Why don't you pick two or three for us to work with?

FEMALE VOICE: How about the 29th? Thursday the 29th? A week from today?

MALE VOICE: The only thing I don't know administratively is as far as confirming the availability of this room.

CHAIRPERSON SEGALOFF: So why don't we set a couple of dates? We've got to give notice to the public. We've got to let them know.

MALE VOICE: Right.

CHAIRPERSON SEGALOFF: So we'll do the best we can to –

MALE VOICE: I would expect that the date of the hearing will probably be in the paper.

CHAIRPERSON SEGALOFF: It will.

[66] MALE VOICE: (indiscernible) So we will make sure that it's posted as many places as we can think of.

CHAIRPERSON SEGALOFF: So the 29th is a good –

FEMALE VOICE: One possible date, the 29th?

FEMALE VOICE: 29th?

FEMALE VOICE: 1/29? Absolutely.

MALE VOICE: What night of the week is that?

FEMALE VOICE: Thursday. Thursday the 29th.

FEMALE VOICE: There's availability? Are you available? All available? Mal?

MALE VOICE: As far as I know right now. But I have to check –

FEMALE VOICE: On the 29th?

CHAIRPERSON SEGALOFF: What's the next Tuesday?

FEMALE VOICE: Jim is out of town.

FEMALE VOICE: That's the 3rd.

FEMALE VOICE: The 3rd.

CHAIRPERSON SEGALOFF: Wednesday or Thursday I can do. I can't do it Monday.

[67] FEMALE VOICE: I can't do Wednesday.

FEMALE VOICE: How about Thursday the 5th?

CHAIRPERSON SEGALOFF: Thursday the 5th?

FEMALE VOICE: How is Monday the 2nd?

FEMALE VOICE: I can't.

FEMALE VOICE: These are far enough (indiscernible)

FEMALE VOICE: Yeah. (indiscernible) is actually probably very –

MALE VOICE: Either the 29th or the 5th.

CHAIRPERSON SEGALOFF: The 29th or the 5th.

FEMALE VOICE: Right.

CHAIRPERSON SEGALOFF: And you'll call that Solutions and –

FEMALE VOICE: Yes.

MALE VOICE: All right. We're heading for the 5th right now. Right?

FEMALE VOICE: Yeah. All right.

CHAIRPERSON SEGALOFF: Okay.

FEMALE VOICE: Same place, same time.

FEMALE VOICE: All right. Does anybody want to come up and –

CHAIRPERSON SEGALOFF: All right?

MALE VOICE: Can I ask a question?

[68] CHAIRPERSON SEGALOFF: Sure.

MALE VOICE: I think (indiscernible) most people here who probably have a very particular interest, they're more interested in the next meeting that you spoke about because they don't want to be just shut off here and then be put at the bottom of the list next time. So I don't know how the rest feel about that. But I think that's the wiser (indiscernible) people who have something to say and not be (indiscernible)

CHAIRPERSON SEGALOFF: I guess if we could limit it to a handful of people, then we can – it won't make any difference. We can get them (indiscernible)

MALE VOICE: I can speak for my own case. In my opinion, I've heard enough tonight (indiscernible) and that's going to take a while.

FEMALE VOICE: Excuse me. What is your name, sir? For the record, your name?

MALE VOICE: (indiscernible)

CHAIRPERSON SEGALOFF: Well, we started off with a rule of three minutes. Do we have anybody that wants to come up?

FEMALE VOICE: For three minutes.

MALE VOICE: I just have a question. At the next meeting, will we be permitted (indiscernible)

[69] CHAIRPERSON SEGALOFF: I don't see why not.

MALE VOICE: (indiscernible) fire chief, the test givers and the test takers. That's the only people affected. Test givers, test takers, your board, commissioners (indiscernible)

CHAIRPERSON SEGALOFF: I think first it's a public meeting. So you can't sit in a public hearing and say we're limiting the public to those who took the test and those who are –

MALE VOICE: (indiscernible) and nobody, you know – you only have a handful of people speaking.

CHAIRPERSON SEGALOFF: Well, (indiscernible) – it took us – we're prepared to have some people speak. I mean –

FEMALE VOICE: Come on up.

FEMALE VOICE: Yeah.

MALE VOICE: If I could just say one thing? With regard to the letters that people received, one note. The reason that people who took the examination received letters about tonight's meeting is because we thought that was the best way to get – the quickest notification to people about what was going on. Because we knew that the people who took

the exam had a [70] lot of questions about what had happened and what was going on. So (indiscernible)

MALE VOICE: Let them speak and then come back and we'll cut it off –

CHAIRPERSON SEGALOFF: Then we're going to change the rules. But just to get this – you can speak, limited to three minutes, and you won't be penalized the next time around. If you want to come up – but for three minutes, talk to us about what you want to talk to us about. And you're not going to be penalized when we have the next meeting. I'm not sure where you'll be on the list. But – all right? So why don't you start? We'll bring a couple of people up. Do your best please to try to limit it –

FEMALE VOICE: We'll time people, Mr. Chairman.

CHAIRPERSON SEGALOFF: It just won't be fair to let someone ramble and then –

FEMALE VOICE: (Indiscernible)

CHAIRPERSON SEGALOFF: Yeah. Give us a two-minute break please.

FEMALE VOICE: I'm turning the tape off. Time please? 7:10 P.M.

(Off the record)

[71] CHAIRPERSON SEGALOFF: Oh, guys? Some people are leaving. I've been asked that it is important that you can't contact us individually. I

don't want to have to – I mean this has happened on occasion. We have to say to people, "Sorry. We can't talk to you. We can only do it at a public meeting." So, please, as much as I think a lot of us would be interested in talking to you one on one, we can't do it. Okay?

And we're all set (indiscernible) Okay.

* * *

[76] FEMALE VOICE: Gary Kinney?

MALE VOICE: Let me start –

FEMALE VOICE: Your name and address?

LT. KINNEY: Lieutenant Kinney.

FEMALE VOICE: Address?

LT. KINNEY: 34 Leo Road, Hamden, Connecticut. I just wanted to say a little bit about the [77] question. I mean myself and the shift that I'm on, we took – I saw a lot of these guys put thousands of hours in studying for this exam. And what's a major problem is these books that were given (indiscernible) the syllabus that we had, the syllabus – these guys knew what we were going to study. They had the books well before the syllabus came out. The only books that most of us had in front of us in the fire houses were Essentials of Fire Fighting. And this is what our department (indiscernible). Again, these books were never in the fire houses. We didn't – we didn't have – I personally – and a lot of other people

that I talked to didn't personally have these books. But numerous people have these materials. Okay?

I think that, that right there, is unfair (indiscernible). And another thing that you need to look at –

FEMALE VOICE: Are the books different from the ones you (indiscernible)

LT. KINNEY: Yes. The Essentials – the only book that's in every fire house is the Essentials of Fire Fighting, which we were trained when we started in this department and which we base our operations on. These other books came out of New York. They're the [78] Chiefs from New York that wrote these books. Their makeup of their city and everything is totally different than ours. And some of these books are very contradictory. One would say one thing. Another book would say another thing. And then our department would say another thing.

So when we go in and take these tests, who do we believe? Do we go by – yeah. They say, "Yeah. Go by the material." But I go by what my department tells me to do. I don't go by what other people from outside the department tell me to do. So if my Chief says, "This is the way I want things done", that's the way I go by. That's the way I was taught. And those are the rules I'm going to follow.

So going in and taking the test – I'll give an example. They had one question. If you get into a motor vehicle accident en route to an emergency call,

what do you do? According to the test, the right answer was "Call a supervisor apparatus. Call the Chief of the department." You don't do that. Our policy is "Call the Battalion Chief. Call the Police Department. Call another company if there are any engines." That's our policy. So why take the question and put it on the test and ask us to answer it is this right or is this right [79] when we don't have supervisor apparatus?

You had numerous questions that were like that that challenged what you had up here as far as what was right as far as department policies. And that's wrong.

And like, again, I say I see these guys – I saw (indiscernible) study, studied every day, sharp kid. You're going to tell me this kid, this sharp boy that studied, does what he's supposed to do, comes to work, does his job, who is going home about the test and everything, that he failed this test? This kid is bright and sharp. There's no way. And I got to sit here and see him with his head down because he hears that he didn't pass the test. That's a slap in the face. It's not fair. And like, again, there's enough divisiveness among this department. I thought we were supposed to be comrades and we were together. That's what firefighting is supposed to be all about. But it's not. These guys think there's so much diversity on this department.

I grew up around white, black. I don't care what color you are. I treat people based on how you treat

me. And things – the way things are going now hurts. And I know Chief Grant loves this department. But the diversity that goes around this department hurts [80] and it changes your views. It changes your values. And this test showing that no minorities passed –

FEMALE VOICE: Three minutes.

LT. KINNEY: It's not going to work. It's going to cause more diversity. And you're going to see more (indiscernible) over there in the corner and the Captain over there and the arguments over here. It's going to cause a big ruckus. And it doesn't make sense. We're supposed to be together. We're supposed to work together. We're supposed to save lives. And that's supposed to be the most important thing. And it's not.

(APPLAUSE)

FEMALE VOICE: Wayne Ricks?

MR. WAYNE RICKS: Good evening. Wayne Ricks, 144 Coleman Road, West Haven, Connecticut. I'd like to make a correction to what Ms. Marcano spoke about earlier. She said the board consisted of one black, one Hispanic, one Caucasian. That is inconsistent. My board consisted of one African-American, two Caucasians.

Other thing, you speak about (indiscernible)

MALE VOICE: What board are you referring to?

CHAIRPERSON SEGALOFF: What [81] (indiscernible)

MR. RICKS: The oral board for the Lieutenant's exam.

CHAIRPERSON SEGALOFF: Oh. Oh. I see.

MR. RICKS: The oral board. We're talking about the exams.

MALE VOICE: Okay. Okay.

MR. RICKS: We also speak about fairness. The last exam we gave curves. Over 18 guys benefited. And I don't think the majority of those were African-Americans.

Thank you.

FEMALE VOICE: Harpo Melendez?

MR. XAVIER MELENDEZ: Xavier Melendez, 260 Upson Terrace, New Haven, Connecticut.

FEMALE VOICE: I'm sorry.

MR. MELENDEZ: Xavier Melendez.

FEMALE VOICE: 260 Upson Terrace.

MR. MELENDEZ: New Haven.

FEMALE VOICE: Okay.

MR. MELENDEZ: I just want to echo Lieutenant Kinney. We all spent a lot of money, a lot

of time and purchasing these books. And we received a letter stating that we had (indiscernible) the test and [82] all the questions are pertinent information to your job description and what position you're applying for.

Some of the questions that I got on the Lieutenant were "Where do you position your apparatus – where do you position your apparatus? Uptown? Downtown? Underground? Things that we don't do in our department. Again echoing Lieutenant Kinney, I think possibly the board or fire experts should look at every question individually and maybe some of the results might change and they might – the changes on the test might get more people that we're, you know, we're looking for.

FEMALE VOICE: Are you talking about the oral exam?

MR. MELENDEZ: I'm talking about the written exam. And then also look at the oral exam. (indiscernible) chief of department, other experts to come in and look and say – another question, "Where is Engine 15 located?" When I came on, there was no Second Battalion, either east, west. That's it. No Second Battalion. And the letter that I received said pertinent information to your department. We don't have a Second Battalion. I never had it when I came on the job. So looking at that information, that's not pertinent to me because we don't have it.

[83] That's all I have to say.

CHAIRPERSON SEGALOFF: Thank you.

FEMALE VOICE: James Watson?

MR. JAMES WATSON: James Watson, 650 (indiscernible) I just want to start by saying I think (indiscernible) that we had to study from (indiscernible) buy books. I mean two kids and a wife. (indiscernible) That's one problem right there. From my understanding, I understand they didn't have to buy (indiscernible) material to study from. I mean we had (indiscernible) And that's over 1200 pages of reading material. (indiscernible) I think that was totally unfair. (indiscernible) prestigious schools in America. I mean it's not the best. But it's a pretty good school. I'm not saying I'm saying the smartest kid on the job. But nor am I the stupidest. I think that material was more than what you would have (indiscernible). I think that was just (indiscernible) that they had to curve the exam, the last exam, and they had less materials to study. They had to actually give a curve on the last exam (indiscernible) to pass. They gave a curve. I don't know if you're aware of that. So I mean they had less materials. Not only that, they gave them a curve so they could pass. And now here it is they're giving a test [84] that's four times harder – I mean four times the reading material and it's much harder and you have to put in more time (indiscernible) was the test fair? I mean it depends on where you're standing to ask that question. Because fair (indiscernible) material that was based on mostly the New York Fire Department material. Okay? I don't know about anybody else in this room. But I fight

fires here in New Haven, Connecticut. I mean they asked questions about – what somebody else said. You have a fire in uptown Manhattan. And which way do you approach the fire from, from the uptown side or from the downtown side? I mean they did (indiscernible) could have pulled that question out of there. But it was two different ways that they could have posed that question to you. And I fight fires here in New Haven, Connecticut, not in New York City where there's an uptown side you have to approach a fire or downtown side you have to approach a fire.

And after (indiscernible) Rules and Regulations was outdated. I mean it was so outdated it was ridiculous. I think somebody else brought up another question about which company (indiscernible). And I believe the answers were Emergency 3, Engine 16 or Engine Company 3. Three of those companies are out of service. [85] I mean it might have been a no-brainer. Yeah, that's an easy answer. That obviously says the material that was given to the company (indiscernible) test us on was outdated material. There was another question in there based on inch and three quarter line and inch and a half line. I mean here in this department, when I first came on the job in 1998, we were just making that transition from inch and a half line to inch and three quarter line. We don't inch and a half line. (indiscernible) to fight fires (indiscernible) And that was a question where if you know the knowledge of the department and what you do on the job, yeah, (indiscernible)

FEMALE VOICE: Three minutes.

MR. WATSON: Excuse me.

FEMALE VOICE: Three minutes.

MR. WATSON: I think I made my point. I think this test was unfair. We don't use a lot of things that were on that test.

CHAIRPERSON SEGALOFF: Mr. Watson, I have a question.

MR. WATSON: Yes, sir?

CHAIRPERSON SEGALOFF: (indiscernible) about materials. And someone else made a comment – I think it's important for us to understand. I'm trying to [86] understand what materials people have to buy, what materials are available to you and there seems to be some discussion that there's some other materials that maybe are available to some, not to others. So just tell me where does that – there's some material that can be purchased. Right? For $500.00? Is that –

MR. WATSON: The total of the books, the five books that we have to buy, must have been a total of about $500.00 (indiscernible) on those five books to buy (indiscernible) one book, a Fire Chief book, that we shouldn't even be reading (indiscernible)

CHAIRPERSON SEGALOFF: They're materials that anybody can buy. You've got to come up with $500.00. But –

MR. WATSON: Yeah.

CHAIRPERSON SEGALOFF: But were there any other materials that were circulated out there that – I don't know if I misheard – that maybe were distributed to some but not to others?

MR. WATSON: Well, a lot of people had these books prior to the examination being announced.

CHAIRPERSON SEGALOFF: A different book than the material you could buy for $500.00? Another set of books?

[87] MR. WATSON: No. The materials that we had (indiscernible) for this particular test, a lot of those books people had prior to the test being given. People had those books, you know, before – I don't know whether they (indiscernible) I don't know what the situation is. But people had those books prior to the examination. I mean the only book that was (indiscernible) fire house which they used on the previous exam was the Essentials of Fire Fighting, which was not (indiscernible). That's what we trained on. That's (indiscernible) Lieutenant's examination (indiscernible) not used on this examination. And in order for you to study and (indiscernible) and buy the material. I mean that was (indiscernible). And those books (indiscernible) like I did myself. So that might have been a setback for you right then if you didn't rush out and (indiscernible) one-day delivery (indiscernible) took a couple of weeks before I got mine. I mean I could go on and on (indiscernible).

MALE VOICE: Thank you.

CHAIRPERSON SEGALOFF: Thanks.

* * *

[95] FEMALE VOICE: All right. That's the end. of our list. I'm sure that –

A VOICE: (Indiscernible)

FEMALE VOICE: Wait. Wait one second.

All of us here, no matter what happens in this process – I'm sure I speak for all of us – value all of you as firefighters. I want you to know that because I think a lot of us have (indiscernible) animosity happening here. And it hurts all of us (indiscernible) to hear all of this anger coming out. And I hope in this process that we all – you should know that all of us on the board (indiscernible) that we will do this in a very fair way. We will look at everything. We will hear from everybody. But we all value all of you and the job you do every day for all of us.

CHAIRPERSON SEGALOFF: You know, (indiscernible) that I heard tonight was that Alderman (Indiscernible) save my baby. And (indiscernible) getting emotional. But it's just very sad to sit here and feel that I can't here, the board can't here, no matter what we do. I don't know that. It's just very sad. I'm not suggesting that anybody do anything. I'm just (indiscernible) it's a big burden for us [96] (indiscernible)

* * *

VERBATIM PROCEEDINGS

CITY OF NEW HAVEN
CIVIL SERVICE BOARD

IN RE:
FIRE CAPTAIN AND FIRE LIEUTENANT
PROMOTIONAL EXAMINATIONS

FEBRUARY 5, 2004

KENNEDY MITCHELL HALL OF RECORDS
200 ORANGE STREET
NEW HAVEN, CONNECTICUT

[2] . . . Verbatim proceedings of a Hearing of the City of New Haven, Civil Service Board, In re: Fire Captain and Fire Lieutenant promotional examinations, held February 5, 2004, at 5:30 P.M., at the Kennedy Mitchell Hall of Records, 200 Orange Street, New Haven, Connecticut . . .

CHAIRPERSON JAMES SEGALOFF: A couple of sort of – I wouldn't say housekeeping. But perfunctory – they're sort of perfunctory – that I think we should deal with. One, Tom Ude provided us, the Commission, on January 22, a few weeks ago – it seems like months ago – with a summary of Civil Service laws. And I think we should just put that in the record. I've got a copy here that I wrote on. But

we should put that – that should be part of the record.

MR. THOMAS UDE: I did not bring any copies.

CHAIRPERSON SEGALOFF: Okay. That's okay. I'll get –

[3] MR. MALCOLM WEBBER: I have copies that I'll give to the Court Reporter.

CHAIRPERSON SEGALOFF: And we've got all of our Commissioners here with the exception of one. That's Francine Caplan. I'm Jim Segaloff. Mal Webber and Zelma Tirado. So that will go in the record.

I also want to put into the record, only because I feel I want to be very careful and as careful as I possibly can and do what – I try very hard to do the right thing all through these procedures. Is that I received a letter at home. It's not dated. But it was from Dr. Boise Kimber. And it was, in my view, very innocuous, simply saying that the last meeting – he didn't know the format and he understood that he was out of order – and I agree with him, by the way – and apologized for his being out of order. So I just want to enter this into the record. It's, I think, as I said, meaningless, innocuous letter. But it came to my house. And I feel I should make everybody aware of it and put it into the record.

Let me mention what is in Tom Ude's letter, who is the Corporation Counsel, that I think you should

all be aware of. You'll certainly have the right to look at it and see it.

[4] But what he tells us is that – this isn't really particularly warming to me. "New Haven Charter and Civil Service Rules, as well as Connecticut law, do not identify the mechanics of your board's review and do not describe one particular process for evaluating whether or not your rules have been complied with."

So, as some of you may remember from the last meeting, we were – I wouldn't say winging it. But we were certainly operating in a framework of trying to do what we felt was fair and appropriate and sensitive to all issues and all people who are involved in this process.

And as Tom Ude says and from what – and he's our counsel that we're relying on and we have a lot of faith in what he has to tell us. And he tells us there are no mechanics to help us in our review necessarily nor are there any particular processes.

So we're going to continue with the – in that – somewhat of that framework to proceed along the lines that we feel is open and fair-minded and trying very hard to hear and understand the views of all of you who feel you have something to say on some of these issues.

What Mr. Ude also says in his memo is [5] "What is clear, however, is that – we have the authority and the duty to determine whether or not to certify the

results of a particular exam. So we're taking on that responsibility. I think most of you know – I'll try to be a little quicker here.

But so you understand that our board gets an eligibility list after the exams are taken that have the results. And we are then given the responsibility to certify that list. And we've now got that list in front of us and we're being asked to certify it. And that's what we've got to – I believe that's what we've got to determine as to whether we want to – we feel we should certify those – that list.

Let me mention one or two other quick things. One is that I'm told that tonight we will not have with us the consultant or a representative of that consulting group that both prepared and administered the test nor will we have any statements from that person.

And it's my judgment – and I assume that we all agree – that that's important to us in making our decision to hear what that consultant has to say about this exam.

So what I am saying to you at this point, unless things change, that we do not anticipate making a [6] decision tonight. We recognize there's time limitations. And we're going to do everything we can. But we're not going to sit here and make such an important decision, in my opinion, if we don't have some additional – I don't know if I'd use the word evidence – some additional statements from some of the professionals in this field who have administered this

test that we can listen to, not necessarily rely on maybe, but certainly listen to in making that decision.

And we'll talk some more tonight about what else we may or may not want, what the Commission wants. We have not discussed this, obviously, amongst ourselves. What the Commissioners want in terms of additional expertise testimony to come before us and tell us about this exam.

That being said, it is very important for all of us to hear what all of you have to say about the exam. And we're going to open it up. We'll have a – do we have the sign-up sheet?

A VOICE: Right here.

CHAIRPERSON SEGALOFF: And I'd ask you to – I think it will go quicker if people sign up – let me finish this. Sign up now. We're going to give you four minutes. If there's someone out there – and I'm told [7] there's at least one person – who represents a group of people, it sure would be helpful – and I think we've – is it – someone said to you that they represent a group and –

MR. WEBBER: Right. Eleven of them. Eleven of the firefighters are being represented by the young lady over on the left. And she has requested that she have at least five minutes –

CHAIRPERSON SEGALOFF: Okay.

MR. WEBBER: – to represent the eleven, which I thought made sense.

CHAIRPERSON SEGALOFF: All right. All right. And if there's anybody else out there who represents a group of people, whatever the group is, we'll work that out. That would be great. It will give you a little more time. And if we can – you can speak for those people and we can avoid – or not have the necessity of having another ten people come up. That would move things along.

Secondly, we'd ask you to try not to be repetitious. If someone gets up here and talks about what we heard yesterday – last time, for example, the question about the fire – being asked, "When you come to a fire, do you park your truck uptown or downtown?" I [8] mean we've heard it once. I don't know that we need to keep hearing it. I mean if you feel you have to tell us that, I guess that's okay. But try not to keep repeating things.

Someone is going to be a timekeeper here. Just – after three minutes, someone will say – Tina will just say "You've got a minute". And do your very best. please. We'd expect in terms of fairness that you wind up in four minutes.

We'll go as long as we need to to get everyone a chance to be heard.

I don't have much more to add. I just – I don't know – Francine – Mal?

MR. WEBBER: No. I'm all set.

CHAIRPERSON SEGALOFF: Zelma, anything else?

Let me just – that's it. Well, obviously, at least the thought is tonight that we will do this again as soon as we can and get some other people in here to testify. And we'll see about the ground rules then. But to the extent we can do, you'll get a chance – some will get a chance to speak up again.

So we have a sign-up sheet. Could I ask you please, because it will go a little quicker, if you [9] do intend to speak, could you just come forward and sign up? And then we can move it right along.

MR. WEBBER: Well, if you're not signed up.

CHAIRPERSON SEGALOFF: If you're not signed up. It only looks like there's four or five names.

MR. WEBBER: That's fine.

CHAIRPERSON SEGALOFF: I'm not complaining.

Okay. Let's start with the top of the list and – well, someone should – you've got enough to keep you busy, I guess. Right?

MS. ZELMA TIRADO: I'll take it.

MR. WEBBER: Yeah. You can call the names.

* * *

[17] MS. KAREN LEE TORRE: Good evening. My name is Karen Lee Torre, Mr. Chairman, members of the board. I'm here on behalf of eleven firefighters who have retained my office to represent them. That list is growing, however. I expect to be representing a fair number more.

MS. TIRADO: Excuse me.

MS. TORRE: Yes?

MS. TIRADO: Can you –yeah.

MS. TORRE: My clients tonight are not in the room right now. By agreement, they, too, have decided to leave the room with other firefighters because they have a desire, unlike apparently what happened the [18] last time, to have this meeting be as civil and quiet as possible. And they have an interest in trying to maintain good relationships between and among them. So they agreed that I should speak for them and that they should leave along with those for whom Mr. Egan spoke.

But I am here – additionally, I'd like to raise a point of order. It is my understanding – and please feel free to correct me if I'm wrong – that one of your members has a relative or family member who is on the list, one – Captain's or Lieutenant's. And if that is the case, I would like that board member to recuse himself or herself.

CHAIRPERSON SEGALOFF: That's the easiest question since this all started. And I've got the easiest answer for you or the right answer. Barbara

Tinney, who is not here, I believe her – was it her brother? Her brother is a member of the Fire Department. He did speak. Barbara was not here last time. I don't know that she formally recused – was – she was recovering from back surgery. She's not here tonight.

And just on a personal level, I agree with you that she should recuse herself.

MS. TORRE: Very well.

CHAIRPERSON SEGALOFF: I don't – I expect [19] she has or will or will not participate in any of this.

* * *

[32] MR. DONALD DAY: Esteemed Commissioners, my name is Donald Day. I represent the Northeast Region of the International Association of Black Professional Firefighters.

We heard the union president talk about fairness, as the esteemed attorney talked about fairness. We also heard the esteemed attorney talk about the [33] results were statistically insignificant. You decide if this is statistically insignificant. Seventy-five percent of every African-American that took that Captains test failed it. Sixty-two-and-a-half percent of every Latino that took that Captains test failed it. Sixty-eight of every African-American that took that Lieutenants test failed it. And there's one. Seventy-eight-and-a-half percent of every Latino that took that Lieutenants exam failed it. If those aren't – if

those results are statistically insignificant, then I don't know what statistically insignificant mean.

In 1996 – 1999, you had a Captains exam. A white male came out Number One. A Latino male came out Number Two. And a black male came out Number Three. In 1996, almost – in 1996, with the Lieutenants exam, almost similar results. White male came out Number One, African-American male, Three, Latino male, Four, in '96. '99, one, five and one. The top one.

Every test prior to this one, African-Americans and Latinos have done well, not as well as we'd like, but they've done well. They placed high enough to be promoted.

I'm not saying there's nothing wrong with the process. But there was something inherently wrong [34] with this test. And I think what this Commission has to decide is whether it's better to spend $100,000.00 to throw out this test than hundreds of thousands of dollars trying to fight a test that is statistically significant.

They talked about the Uniform Guidelines. And the Uniform Guidelines in Section 3, Subsection d, talks about adverse impact and the four-fifths rule. These – these percentages of the African-Americans that took – and Latinos that took and failed this test fall well within the purview of Section 4, Subsection d, of the Uniform Guidelines that deal with adverse impact.

In fact, 74 percent of everybody that passed this test were white males, 17 percent was African-American, 8 percent was Latino.

She also talked about a lawsuit. As President of my Local organization, in 1996 we sued the City of Bridgeport for having the Lieutenants exam that had – that we felt had adverse impact. And we won that lawsuit. So, you know, there's history on the side of dealing with lawsuits as far as adverse impact are concerned, with our case setting a precedent as far as that's concerned.

On behalf of the Northeast Region, on behalf – and let's go one step further. Let's take race [35] out of the picture. Out of 40 – 42 – no. Out of 77 individuals that took that Lieutenants exam, 42 failed. Over 60 percent of those individuals that took that Lieutenants exam failed. Now, that says that – New Haven has one of the best-trained divisions in the state of Connecticut. And that says a lot about that exam if 60 percent of the individuals that took that Lieutenants exam failed.

Just – in Bridgeport – I'm a retired Captain in Bridgeport. In Bridgeport, we have 67 Lieutenants, 46 white, 13 black and 8 Latino. That's 32 percent of our Lieutenants are people of color. In the Captain rank, we have 15, 10 white, 2 African-American and 3 Latinos. That's 33-⅓ percent of every Captain in the Bridgeport Fire Department is a person of color.

Now, what are we doing right that New Haven in this last test didn't do right? I'm asking, I beseech you

to throw away that test. Talk to Jack Colligan, who is Director of Civil Service in Bridgeport, to find out what Bridgeport is doing different than New Haven.

When we go in there to take the test, we all read the same books. We have the same assessors. We're asked the same questions. With the Captains exam [36] that I took, African-Americans and Latinos took four of the top seven positions. With the last Lieutenants exam that we took, 48 percent of every Lieutenant that was promoted off that list was African-American or Lieutenant – I mean African-American or Latino. So we're doing something right.

And I can tell you this last test was inherently unfair. Again, I ask you not to certify this list because it's the right thing to do.

MS. FRANCINE HARCOURT CAPLAN: Thank you, Mr. Day. I just want to ask you something. Do you think that – what happened after that in Bridgeport? I'm curious to know what happened after the – after the test. Yeah.

MR. DAY: Well, Bridgeport ended up changing the process. They changed the relative weights on the test. Before, we had a written and an oral. The written was scored as 70 percent, the oral was 25 percent and 5 percent seniority. The City of Bridgeport understood that an individual's ability to answer a multiple-choice does nothing but measure their ability to read and retain.

The thing that separates whether you're going to be a good officer or not is your ability to [37] score well on that oral. That oral puts it – deals with scenarios, real-life scenarios. What would you do in a particular situation? What would you do if you had a problem in your house?

So they changed the relative weights of those tests where the oral is scored 65 percent of your test, 35 – 30 percent for the written and 5 percent of the oral. Then it was encumbent upon us to share our resources, start studying together and make a concerted effort to do well on these things. And that's who we were able to change it in Bridgeport, turn it around.

Other than that initial lawsuit in 1986, we've never had to sue the City of Bridgeport on a promotional exam ever again. We've never not been fairly represented on a promotional exam since 1986. But I – we can't – I know the Commission. We said that we can't make a decision based on who is going to have a lawsuit against the City right now.

MR. DAY: Right.

MS. CAPLAN: That's not – we're here to find out, as our Chair person has said, whether this test, as some have indicated, did have problems. And that's why we do probably, most definitely, need to speak to an expert. And we understand both sides of the issue [38] here and are going to make as best a decision as we can based on everything we hear.

* * *

[60] MR. GARY TINNEY: Gary Tinney, New Haven Fire Department.

MS. TIRADO: What's your first name again?

MR. TINNEY: Gary Tinney.

MS. TIRADO: Gary.

CHAIRPERSON SEGALOFF: Mr. Tinney, just for the record, Barbara Tinney is your –

MR. TINNEY: My sister.

CHAIRPERSON SEGALOFF: – sister. Right?

MR. TINNEY: Yes.

[61] CHAIRPERSON SEGALOFF: Okay.

MR. TINNEY: And she's – it's the last thing she's worried about. She did have surgery –

CHAIRPERSON SEGALOFF: Right.

MR. TINNEY: I wanted to say I was a little – I'm a little upset. I'm part of the union. I'm part of the Executive Board of the union. And we had a meeting the other night and I was told – and we all agreed that we weren't going to take a stance on this issue. After listening to the President of the union, he pretty much took a stance on this issue. And I'm upset being a part of that board that I was lied to. We weren't going to take a stance and we were just going

to ask that someone from an outside party look into this and look into the validity of the test.

One of my major concerns – other than that, one of my major concerns is a lot of this test – and I mentioned it before – had nothing to do with the City of New Haven Fire Department operations and it contradicted what we were taught or at least what I and numerous other firefighters were taught throughout our careers.

And when you receive a test and it asks all of these different questions and you're asked to [62] answer it the department's way or the way these books – these books that a few of them are based on New York operation. They're confusing.

I think the test was flawed. I think the test was flawed because it didn't pertain again to our operations. Another issue of importance was the fact that people had these books before the syllabus was handed out. Numerous firefighters had these books and they were studying them hard. Not the books that we have in the fire houses. In the fire houses, we have a book called Essentials of Fire Fighting. I think if we were given the test on promotional exams, it should be on the test that we all have access to – books that we have access to, books that are in our fire houses, books that are in our Training Academy, books that are – we receive memos every month. Read this particular memo. Read this particular memo, based on the Essentials book. Nothing is based on these books, these Norman Clark, all these new

New York books that came out of wherever that no one had a clue about what they were talking about.

And I just think it's unfair to – I studied, personally. I studied a long time. I'm sitting up here. I listened to all these sob stories and what people were going through. I could run that to you, too. [63] But I won't. I studied and I think I have a good grasp on what my job is. And I'm pretty sure I'm well qualified to be a Captain of this New Haven Fire Department.

But I honestly feel that the questions on this test weren't relevant to what we were taught. And I think that's the main thing that has to be looked into.

And the other thing is the fact that people had these books a long time before that syllabus was given to us and say, "Go out and buy these books." I ran out, bought my books, ordered my books. I had to wait a month and a half for some of the books because they were on back-order. But numerous people – I'm not going to say any name – had these books. They had access to these books. They were seen studying these books. And they weren't seen – and they knew for a fact that Essentials – a lot of things from the Essentials of Fire Fighting wouldn't be on this test.

We had a gentleman stand up in our meeting the other night, union meeting, and state, "Oh, I talked to the guy from I&O Solutions. He pretty much told me the Essentials wouldn't be on there." And the fact that I go to fire classes, I picked up on the fact that these other authors were going to be on this test and not [64] Essentials. And we spoke for a long time.

And I want to understand why this guy would come in and talk to this man and tell this man that we weren't going to have these particular books on this test and he came to my fire house, he didn't give me any clue as far as what he was going to – you know, what this test was going to pertain to. He just asked what was – what did we think was pertinent to the test-taking process.

The folks that gave us the test, I don't think they've ever tested on promotional tests. I might be wrong. I think they've done entry-level testing. And I just don't – I just think they were throwing a group of books and said, "Hey, make the tests up. Whatever happens happens." And that's it. I don't they sat down and actually communicated with anyone from the department, with – they might have communicated with one or two. But they really needed to sit down and see what was pertinent to the New Haven department's policies.

And I think if you look at this book, you look at the questions, you will see, because there's numerous questions that have nothing to do with New Haven Fire Department. Totally irrelevant. And it's bright as day. It's right in front of you. And those questions [65] are the questions I have a concern.

CHAIRPERSON SEGALOFF: If you would, Mr. Tinney, help me on one issue or give me your thoughts. Even though we might find or conclude that certain questions were irrelevant – the question that we've heard time and again, "Where do you park the

truck, uptown or downtown?" We sit here and we say, "What a stupid question." But isn't one reaction of that that stupid question doesn't necessarily affect anybody's cultural background, history, et cetera. It's stupid whether you're Hispanic, whether you're African-American or whether you're white. So should we consider throwing out a – I'm just –

MR. TINNEY: Right.

CHAIRPERSON SEGALOFF: – going on here, but trying to understand this. Should we – how people feel. Should we consider throwing out the exam or not certifying the eligibility list if the best we can conclude is there were a bunch of stupid questions like that but it –

MR. TINNEY: Well, the thing – with the stupid questions I spoke of, if you had people that had these books and know these authors well – these books are – the people that have these books are uncles, [66] nephews, kids from people that have been in the Fire Department for years. Personally, I never had these books. I never had anyone that was a grandfather or uncle or anybody. I grew up in the city of New Haven. I've been in New Haven all my life. And these books have been read and known for a long time before this test came out.

And what I don't understand is why would they take and change the whole way of testing and give us another test on this – this I&O Solutions, who we never used in the promotional test, give them an opportunity to do something that they – I don't think

they had a clue that they knew what they were doing with a promotional exam. There's a big difference between promotional and entry-level exams. And with promotional exams, you really need experience on dealing with diverse cities and dealing with the makeup of the city and what's important to the city.

I heard the gentleman speak of the tankers on the highway and things like that. Guess what? A lot of those questions weren't up there. They were in the books, but they weren't up there. Things that were important to our operations weren't up there.

And what I'm saying is someone who had [67] material before the test, reading material, and who understood these authors would do a lot better on this test than people like myself that these were new authors to me.

MS. CAPLAN: Mr. Tinney, were these questions that you said are flawed on both the oral and the written or just the written?

MR. TINNEY: Most of the questions I'm speaking of are on the written. Some of them were on the oral, also. But most of them – I mean there were irrelevant questions on the oral. But there were a lot on the written and the oral. I just don't think anyone sat down and gave these guys a good idea of how to do the testing in all fairness to everybody. You know, I feel for everybody, everybody that studied and everybody that scored high. You know, I understand. I understand both sides.

But in all fairness, when we took that test and we walked outside, when we took that Captains exam, black, white, Spanish, Puerto Rican, everybody was outside and all of us were upset. We couldn't believe the questions on the test. And everybody stood around and said, "I don't think I passed. I don't think I passed. I don't think I passed." And guess what? When [68] they found about the list and where they – where the blacks and the white and everyone stood, everybody's view changed.

And then tonight with the union standing up and telling me they're not going to take a stance and then they took a stance is –

CHAIRPERSON SEGALOFF: Okay. Anybody –

MR. TINNEY: Is bad.

CHAIRPERSON SEGALOFF: Thank you very much, Mr. Tinney.

* * *

[89] MR. DAWSON: My name is Octavius Dawson. I've been with the New Haven Fire Department – I'm in my seventh year. I was born here. I was raised in West Haven. But after I joined the Fire Department, I moved into New Haven. I bought a home on Six Eldridge Street in New Haven.

And one thing that does concern me or bothers me – and, also, I – after – straight out of high school, I joined the Service and I served in the first Gulf War

in '91. And one thing that coming through the ranks in the Service was how promotions were done. And I disagree with the way promotions are done altogether. But these are the rules. This is what we go by.

I, myself, did a little research to try and figure out, you know, as a department, the face of [90] the department as opposed to the community. And whereas whites make up 30 – 43 percent, blacks make up 37 percent and Hispanics make up a little under 20. But within our department, whites make up 59 percent, blacks make up 29 and Hispanics make up 13.

And, again, you know, times are changing. You know, we're hopefully going to make strides to, you know, even that out. And with the best qualified individuals.

I also looked at officers in our department. And it bothers me a little bit that 70 percent of our officers in the New Haven Fire Department are white. 70 percent.

Now, I hear people talking about you get the best qualified people. Are you going to tell me that all of our officers – there aren't any others that can change that? I looked at the – I was on the department in '99 when they made the last list of promotions. And I was very pleased – and I was ineligible to take it. I was six months shy of being able to take that exam. And I was very pleased to see that we had blacks and Hispanics that made the rank of Lieutenant. Very pleased.

And I questioned everybody. "Hey, how was [91] the test? How did it go?" You know, with the reading material and everything – and I felt good coming in to this exam. And as Mr. Tinney said and as Dr. Kimber stated, the rules changed. All of a sudden now, we get all these other books that I had no access to. There were individuals in the fire house that had these books, as Mr. Tinney stated earlier. I purchased the Essentials Book of Fire Fighting. And that, I thought and was told, that that is basically the bible of the fire department.

Why on this test was it thrown out? Why? All of a sudden now the rules did change. All of these different books, all this – and the – you know, I went into it saying, "Hey, listen. These are the rules. I'm going to abide by them."

But now as the results come out, no blacks and Hispanics? Why were the rules changed? And as I stated before, I purchased the Essentials of Fire Fighting book months before – once I heard the rumor that there would be a promotional exam, I bought this book, bought the CD-ROM, bought the workbook, and tried to give myself a leg up on it. But as time came down, the word was – and I would be reading in the fire house. I was studying. "That's not going to be on the exam."

That didn't discourage me. I kept [92] reading. As time came closer, "That's not going to be on the exam." Then when the syllabus came out and it wasn't there, now I'm saying, "Well, wait a minute. If

you know what's not going to be on the exam, maybe you do know what is." Because other guys were looking at these other books, you know, that I never seen before.

And as Mr. Tinney stated earlier, when you see 99 percent of minority firefighters – we're first-generation firefighters. You know, a lot of my Caucasian counterparts, they've come into the fire houses when they were little kids. They've come into the fire – they've seen different study material. They went to all the New York fire houses in which all this material is coming. They met John Norman. They've met Randy. And they've been to their seminars.

This – if you look at the results, something's wrong. If 70 percent of your officers are white, something's wrong. I heard this gentleman say that you want the best qualified guy there in the front seat. We all gasped – we watched Good Morning America and there was one firefighter that saved another one, went into that building. You're going to tell me that he's not qualified to be an officer? Something's wrong. Something's wrong if 70 percent of your officers are [93] white.

And if you do this again in another three or four years where you only promote seven or eight officers and you pit 44 Caucasians against 15 or 18 blacks and change the rules again – now, I've got these pile of books. I've been reading them. Ever since the test was over, I've read them. I've been reading them over and over and over. Now come the next exam, the rules

are going to be changed again. That's what I'm anticipating.

So what do we do? I mean I'd hate to be in your spot. I don't know what to do. I mean I – the guys that did study and put the time in and got the good grades, I applaud them. They did a good job. I'm a competitive person. But to look at that list and not see any minorities, something's wrong. Something is wrong when you've got 70 percent of your officers white. Something's wrong. You've got 43 percent of whites in the community, but they make up 70 percent of the officers? Something's wrong.

And, again, I mean you have a tough job ahead of you. You know, I – I've been looking at the books, trying to figure out – you know, I believe that I did fairly well, I believe I came in the top 20. I [94] believe that. But something's wrong. And that's – that's where I'll leave it.

CHAIRPERSON SEGALOFF: Thank you very much, Mr. Dawson.

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VERBATIM PROCEEDINGS

VERBATIM PROCEEDINGS

CITY OF NEW HAVEN
CIVIL SERVICE COMMISSION

IN RE:
FIRE CAPTAIN AND LIEUTENANT
PROMOTIONAL EXAMS

FEBRUARY 11, 2004

KENNEDY MITCHELL HALL OF RECORDS
200 ORANGE STREET
NEW HAVEN, CONNECTICUT

* * *

[96] MS. BURGETT: With all due respect to our consultant who we've worked very well with, it seems to me that one issue, the only one in all of this, is whether or not the questions in and of themselves were neutral questions. It is not the only question that is [97] involved in assessing this test and the outcome as you have seen the raw data.

And part of bringing some expertise to this table is to get a more comprehensive understanding of those issues. So that, for instance, the names that we submitted to you this evening may not be industrial

psychologists, but they are experts in the field of assessment. And several of them have written rather extensively on racial identity and assessment.

So that I would encourage you not to limit the focus to the questions where all of us at this table – Chad has said we could evaluate, but to understand that is only one segment, one piece of a much more overall comprehensive question.

CHAIRPERSON SEGALOFF: Anybody else?

MR. WEBBER: Well, I – I really endorse what Tina had said. I feel that we each will look at this test. We'll each make our own judgment of the questions. And then I'd like to hear somebody, a psychologist or someone of the caliber of the persons here, that any of the questions we have questions about can be submitted.

I would hesitate – and I agree. Tom, I agree 100 percent that to go to any other fire department [98] and bring someone in to look at the test would be very dangerous. I would not trust the judgment, unless I really knew the person in the kind of detail we're not going to be able to get.

MR. UDE: If I could just –

MS. CAPLAN: Go ahead.

MR. UDE: Along that same line, there are things other than just the individual questions themselves. And I'm certainly not an expert in the field or in a position to articulate or identify what those are.

And I guess it's been clear from the outset that this board has been concerned about being very careful about the decision that you're making and appreciate the importance of it all to all of the people that took these exams.

And I guess I just want to caution you to I guess keep an open mind to what other experts may have to add, both specific to this test and in general ways, if it makes sense to you. I mean, obviously, ultimately deciding whose opinions you think makes sense is what you're charged with doing. But –

MS. CAPLAN: But just one more thing. Tina, are you saying that – this is what I wanted to get clear. These experts or some of these experts may not [99] only talk about the specific questions of this test that they're looking at, but they also have opinions on tests in general and the biases that may be in them?

MS. BURGETT: Yes.

MS. CAPLAN: But then why – why hasn't – why just this test? Has this – I mean this is what's gnawing at me. Why are we looking more into this test? Is it because of the results? Because – but then what happens with all the other tests? Because if there's, in general, biases in every test, then why wouldn't there be biases in every single test the City gives to everybody?

MS. BURGETT: I think what we tried to present to this board several weeks ago was not just

information on the overall test but the results of that test in terms of distribution and that what we saw from our vantage point in Human Resources was dramatically different. I don't know that looking at the questions in and of themselves is going to answer every answer. And so all I'm asking for is consideration of other individuals with expertise in assessment, in testing, racial identity and other kinds of concerns.

We may decide we don't want them to look at the test. We just want them to, you know, provide some expert testimony. And that's fine. We may want [100] them to look at the test. And they would fall under the same rubric as you and sign a confidentiality agreement.

I just want to urge caution that we not step away from that there is a larger picture to be looked at, not just simply the facial value of the hundred questions in the written exam and however many there were on the oral exam.

MR. UDE: In response to the Commissioner's inquiry, the reason that the results of this exam is before you and the reason that these proceedings have been going on is that the results of this exam are significantly different from the results of the other previous exams. As to why that happened on this case, on these exams, and it didn't happen on other exams, I don't have an answer. And I don't know that anyone in this room, frankly, would be in a position to give you a definitive answer.

Nevertheless, when you have an adverse impact, it requires a closer look and a decision as to – as to what to do about it, whether to certify, not certify, something else. I don't have the answer for what to do. But it does require a long, hard look.

And I think it would be in the board's interest to try to get as much information on what may [101] have resulted in it in order to make the most reasoned decision that we can make.

CHAIRPERSON SEGALOFF: I think that's exactly what we're trying to do. But I'm not sure why – I don't think any of us question that necessarily. But that's precisely what we're trying to do. I mean that's why we said we want names of people. That's why we're asking people if they've got other names. So we can get people up here who know what they're talking about, having some expertise and keep looking at this.

I would only say one other piece. And that is that from what I can gather the three or four names that you gave us don't have – they may be very, very valuable. I mean they want all of them. But it seems to me that there also may be some value in bringing someone in, at least in listening to Chad, who also has that experience with dealing with fire and police. So I mean in the ideal world if you could find us another – come up with some names of someone who has that experience, that would just personally give me a little more comfort. And that's some more –

MS. BURGETT: Noelia and I are happy to go back –

CHAIRPERSON SEGALOFF: – testimony to [102] evaluate.

MS. BURGETT: – and discuss that. We will go back and discuss it.

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VERBATIM PROCEEDINGS

CITY OF NEW HAVEN
CIVIL SERVICE COMMISSION

IN RE:
FIRE CAPTAIN AND LIEUTENANT
PROMOTIONAL EXAMS

MARCH 11, 2004

KENNEDY MITCHELL HALL OF RECORDS
200 ORANGE STREET
NEW HAVEN, CONNECTICUT

[2] . . . Continued Verbatim Proceedings of a Hearing of the City of New Haven, Civil Service Commission, In re: Fire Captain and Lieutenant Promotional Exams, held March 11, 2004, at 5:45 P.M., at the Kennedy Mitchell Hall of Records, 200 Orange Street, New Haven, Connecticut . . .

CHAIRPERSON JAMES SEGALOFF: Okay. Good evening, everybody. As most of you know, I assume, we looked into a number of people whose names were presented to us to give us some testimony and some insight into some of the issues we've been dealing with. And we selected three people. And they're – two of them are here with us physically today and Dr. Hornick is in – Texas?

MS. FRANCINE HARCOURT CAPLAN: Colorado.

CHAIRPERSON SEGALOFF: Colorado. Aurora, Colorado. And we're going to do this by phone with him. And then we'll talk to Mr. Lewis and Dr. Helms.

As you all know, everybody, this is not a [3] it's open to the public, but we are not opening this to questions to the public. We – as far as a format, our sense is – we'll see how this all plays out – is to essentially have each one of these ladies or gentlemen tell us a little bit about themselves as it relates to the expertise that they can – they have in this area of testing or their experiences. And then we will ask them, from the information we've imparted to them, to tell us a little bit about their views of the testing, the process, the methodology, et cetera. And then the four of us, if we have any questions, will ask them of the participants. So that's our – that's our plan. And we'll see how this all plays out.

So we're ready.

MS. CAPLAN: Okay.

MS. TINA BURGETT: In the spirit of high-tech, let me crawl over there. Sorry.

CHAIRPERSON SEGALOFF: How this will all come out, if you could all hear, we just don't know.

MS. ZELMA TIRADO: And Dr. Hornick did read – did see the exam?

MS. BURGETT: Yes, he chose to.

CHAIRPERSON SEGALOFF: He did what? He read the exam?

[4] MS. BURGETT: Yes.

CHAIRPERSON SEGALOFF: Yeah.

(Placing phone call)

MS. BURGETT: Hi, Simone. This is Tina. Is Chris available and ready? We are ready. I'm going to put you guys on speakerphone. Okay. Thank you.

MR. MALCOLM WEBBER: Is he on?

CHAIRPERSON SEGALOFF: Hello?

Not yet.

MS. BURGETT: We lost him. Did we lose him?

MS. CAPLAN: Yeah. You'll have to redial.

MS. BURGETT: Do you want to press Redial?

MS. CAPLAN: See if it works. Yeah.

(Placing phone call)

CHAIRPERSON SEGALOFF: Hi. Is Dr. Hornick there please?

SIMONE: He's on the other line (indiscernible)

CHAIRPERSON SEGALOFF: I hope he's not on the line that we're on. We're with the Civil Service Commission. Can you put him back – get him on this line and see how that works?

SIMONE: Okay.

[5] CHAIRPERSON SEGALOFF: Thank you.

MS. CAPLAN: See the speakers? The speaker –

CHAIRPERSON SEGALOFF: Who is your high-tech person here?

MS. CAPLAN: But look at the cord –

CHAIRPERSON SEGALOFF: I don't have a clue.

MS. CAPLAN: See? This is a speaker.

MS. BURGETT: There.

MS. CAPLAN: She disconnected again. No. No. I put Speakerphone on and that's –

CHAIRPERSON SEGALOFF: If we don't get this – we are going to get some participation from this group.

(Placing phone call)

MS. NOELIA MARCANO: Leave the phone off the cradle and just –

MS. BURGETT: Hi, Chris. This is Tina. We're going to try you on speakerphone. And I think it will work this time. Sorry for the confusion.

MS. MARCANO: Leave the phone off the cradle.

MS. BURGETT: Okay.

[6] MS. MARCANO: And now put the microphone up to –

MS. BURGETT: The speaker.

MS. MARCANO: Right.

MS. BURGETT: Chris?

DR. CHRISTOPHER HORNICK: Yes. I'm still here.

MS. BURGETT: Okay.

CHAIRPERSON SEGALOFF: Okay.

MS. BURGETT: Let me introduce you to the Civil Service Commission for the City of New Haven. The Chair is Mr. Jim Segaloff. And he'll open.

CHAIRPERSON SEGALOFF: How are you, Dr. Hornick?

DR. HORNICK: I'm doing just great.

CHAIRPERSON SEGALOFF: All right. Great. This is coming across I think as best as we can expect. And everyone, at least on our end, here can hear it.

We've got four Commissioners, Francine Caplan, Zelma Tirado and Mal Webber. And we thought we'd start off if you could just give us a little bit of background about yourself and your experience and your testing area and any specific experiences you've had dealing with municipalities, particularly fire and police [7] departments.

DR. HORNICK: Sure. I'd be happy to do so. I received my PhD in 1979 from Texas Christian University. My degree is in psychology. My emphasis was in statistical measurement and industrial/organizational psychology. And I've been practicing in my consulting business since 1980. So that's almost 25 years. And we have worked almost exclusively in the public safety arena.

We do entry-level and promotional testing procedures for clients all over the country, doing both law enforcement and firefighting selection. We work with counties. We work with municipalities. We've worked with several police and state agencies. For example, we just developed and conducted the entry-level selection process for the Rhode Island State Police. We've worked with the Pennsylvania State Police and many, many others.

A little bit about some of the things that I guess would describe us and me. We have been recognized by our profession as – we were given the highest award from our profession for innovative procedures in the area of applied psychology, in essence, recognizing us with a lifetime award for the work that we've

done in entry-level testing in firefighting and in [8] law enforcement. They examined some research that we had done with our entry-level test and identified our research for this highly prestigious award.

I've also served as an expert witness in several court cases. I have served to help municipalities defend testing or selection procedures that others have created. I've never had any procedure in 25 years that I have designed or conducted be challenged legally. But I have been asked on many occasions to serve as an expert to help cities to defend procedures that others have done or that they themselves have done.

But I've also served as an expert in evaluating selection procedures from the plaintiff side. I've served as an expert for unions in a couple of instances where the procedures that we were arguing with a particular municipality didn't meet the standards and asked if I might weigh in on some of those issues.

I have also served as an expert with the Department of Justice on behalf of the United States in a landmark case of discrimination regarding – in this particular case it was specifically focused on firefighter entry-level selection.

So we have a pretty broad-based level of [9] experience with these kinds of issues. I think if I could say in a sentence, we are probably best known for our ability to be able to forge partnerships and build bridges between I guess I would say concerned parties. I'm quite aware from the information we've

been sent that right now we're in a fairly contentious environment in New Haven and there are a lot of people who have certain belief systems that are impacting how these test results are being viewed. And it tells me, based on what I've seen, that there needs to be some bridge-building here because no one, I don't believe, intentionally tried to create a problem. But there are issues that I'm sure in the next hour we're going to be talking about.

CHAIRPERSON SEGALOFF: Let me just ask you this. Have you had experience dealing with communities that are somewhat similar to New Haven in terms of demographics?

DR. HORNICK: Oh, absolutely. We've worked –

CHAIRPERSON SEGALOFF: Could you tell us a couple of those communities?

DR. HORNICK: Sure. We work a lot in the Atlanta region. There are several large counties down there that have similar demographics to yours. We have [10] worked, as I said, with the Rhode Island State Police and with Pennsylvania State Police.

CHAIRPERSON SEGALOFF: Okay. You've been given some information, from what I understand, regarding the situation here in New Haven?

DR. HORNICK: Yes. We have quite a bit of information.

CHAIRPERSON SEGALOFF: Okay. My sense is, simply as an open-ended question – if you just want to speak to some of the issues that jump out at you and give us your particular views as you see they would be useful to us in pursuing this question of whether or not to certify this eligibility list?

DR. HORNICK: Okay. Unfortunately, this is kind of being viewed as an all-or-none decision. And I do believe that there are some other ways over time that we can address this more effectively.

Ultimately, what we were sent were some statistical information, if you will, final scores, for applicants. I believe there were 77 applicants who took the Lieutenant's exam and 40-something that took the Captain's exam. And we were given the final scores on each of the two test components, the oral board and the written test, for each of those two groups. And then the [11] computation of the final score, which, according to my understanding, the weighting and combining of those scores is dictated by the Civil Service Rules. Is that correct?

CHAIRPERSON SEGALOFF: Yes.

DR. HORNICK: Okay. Very briefly, what we did was do some standard statistical calculations on that data to determine what type of adverse impact existed in the test scores with regard to ethnic minorities. Because there were, I think, only two females in the group, it was impossible to look at women's performance in a group analysis. So we did not look at that.

And I certainly could go into some of those statistical analyses. But if I could just summarize what we saw, we're seeing relatively high, adverse impact. And let me define that because, for the sake of everyone involved, we may not all have the same understanding of what we mean by adverse impact.

In our profession and in the legal community, we identify a concept called adverse impact which statistically determines how well minorities perform on a testing procedure in comparison to whites. Normally, whites outperform ethnic minorities on the majority of standardized testing procedures. This is, in [12] fact, the case with the data that we've seen in New Haven.

I'm a little surprised at how much adverse impact there is in these tests. And I hope at some point here we'll be talking in detail about that. But my conclusion is that we did have significant adverse impact. Some of it is fairly typical of what we've seen in other areas of the countries and other tests that people have developed. But in other ways it is somewhat worse than what we're typically seeing in the profession practiced by others.

I would add that we are a – well, let me put it a bit differently. We have competed with the consultant that you chose to do this process in other arenas and other areas of the country. So we are a direct competitor of theirs. And I want you to understand that I'm not attempting to accuse or attack I/O Solutions in

this process. I'm simply reporting what that data shows.

We find significantly and dramatically less adverse impact in most of the test procedures that we design. But I'm not sure that's a fair comparison if you want to look at it in terms of what's typically done by other companies in our profession.

[13] Let me stop there maybe and see what else I can do here. Because I could go on for a long time here.

MS. CAPLAN: Dr. Hornick?

DR. HORNICK: Yes?

MS. CAPLAN: This is Francine Caplan. Did you get a chance to – beside the statistics that you looked over, did you get a chance to look over the actual test?

DR. HORNICK: No. I have not had time to study the test at length or in detail. We received these by Federal Express about mid-morning today. I have looked through them and looked a little bit at them. But I have not done an in-depth analysis of any of the specific items or pieces of that.

CHAIRPERSON SEGALOFF: And you understand we can't discuss in open session here any specific questions. Were all subject to confidentiality agreements. But we certainly can discuss if you think its useful in a general sense the nature of the

questions or the results certainly from the answers to those questions.

DR. HORNICK: Sure. On a broad scope, the adverse impact on the written exam was somewhat higher [14] but generally in the range that we've seen professionally. I don't want to go into a specific statistic because I think I'm just going to lose most people. But there is an index that is typically calculated that compares the average performance, for example, of African-Americans compared to the white population or Caucasian population that took the exam. You can also compare Hispanics or Latinos to that white population. That statistic is called a "D", as in dog, statistic. And it shows numbers that are at the high end of what we have seen with traditional cognitive testing elements.

The oral board had much higher adverse impact, if you will, against the Latino population that took the exam than I would have expected to see. And I think in comparison to some of the tests in the past, you probably have seen less from some of the data that I saw. I don't have any specific information from previous years. But I think you all are a bit surprised as well that it had as much adverse impact as it did.

CHAIRPERSON SEGALOFF: So let me ask you this. How do you explain the adverse impact concept maybe generally? And then specifically, how do you explain the fact that the adverse impact here, from what [15] you've just said, seems to be more dramatic than what you've seen in other situations?

DR. HORNICK: I'm not sure that I can explain it. What I would say is you are wedded at this point to test components. For example, I believe – and I have not seen your Civil Service Rules. So I apologize for my ignorance here. But I believe that your Civil Service Rules dictate that you must administer a written job knowledge test as one element in this promotional process and that you must administer an oral board of some sort, a structured oral interview, as a second component. Is that correct?

CHAIRPERSON SEGALOFF: I assume that's so. I know 40 percent of the test score was related to the oral piece and 60 percent to the written.

DR. HORNICK: Right. Well, first of all, let's talk a little bit about why I think there is adverse impact in the test. One of them is I think you ought to look as an agency, as an organization, as a community and as a department at perhaps different types of testing procedures that are much more valid in terms of identifying the best potential supervisors in your fire department.

For example, for Lieutenants and Captains, [16] it is a first-level and second-level supervisory position. The Captain and Lieutenant are fairly common overlapping knowledge, skills and abilities that are required to perform in them.

I've spoken to at least 10,000, maybe 15,000, firefighters in group settings in my consulting practice and I have never one time ever had anyone in the

fire service say to me, "Well, the person who answers – gets gets the highest score on a written job knowledge, multiple-guess test makes the best company officer." We know that it's not as valid as other procedures that exist.

However, given your Civil Service Rules, you are somewhat tied to that procedure as the process that you must use for identifying people for promotion.

But there's a couple of observations I could make, not specific to the test itself and items in it, but to the process that you have used. I noted in the literature that Tina sent that the test was not customized to the New Haven Fire Department, Fire and Emergency Medical Services.

A VOICE: Yes, it was.

CHAIRPERSON SEGALOFF: Actually, it was, Dr. Hornick. I don't know what you got. But we did – [17] the I/OC group did customize it, based on the information we have, that they – sent questionnaires to all the Lieutenants and Captains and dealt – and I've got a – well, that's – everything that we've got here shows that in this case it was customized. Unless I'm somewhat mistaken.

MS. TIRADO: Well, is it his opinion that it wasn't customized? Or is –

CHAIRPERSON SEGALOFF: The question was, Dr. Hornick, is it your opinion it wasn't customized or was that just –

DR. HORNICK: It's based on several things. Your procedure apparently be design precluded anyone from within the organization reviewing the test items.

MS. CAPLAN: Say that again?

DR. HORNICK: You had no internal members of the department, subject matter experts from within the department, reviewing the test content. And in some of the newspaper articles and other things we noted there were several criticisms by candidates levied about items not being relevant to the department.

By not having anyone from within the department review the items you inevitably get things in [18] there that test for processes and procedures that don't necessarily match up into the department.

MS. CAPLAN: But you didn't – you didn't get – you weren't able to take – did you take a look at some of the questions on the test?

DR. HORNICK: Not at that level. So I'm only drawing conclusions from what I've read and the material that I've received. But let's not worry about the – maybe it's the term "customized" that is bothering all of you.

The bottom – the bottom line of what I'm trying to say is that there are different reasons for why the adverse impact occurs. And I suspect that some of the criticisms that have been levied by candidates to the

test may or may not bear fruit when one looks at the actual items.

If – in my own consulting practice, we like to have a panel of subject matter experts from within the department who have signed confidentiality agreements to actually look at the items to make sure that the terminology and the equipment that's being identified from standardized reading sources apply to the department. So I think that might be one concern that we have.

[19] I think there are probably several other issues that are much more in-depth than this discussion would allow, to talk about why we traditionally see adverse impact in tests.

MS. TIRADO: Did that happen? Did fire department personnel have an opportunity to look at the test?

MS. MARCANO: No. There was no internal subject matter expert review. The internal data came by way of job analysis interviews and job analysis questionnaires that were distributed to the department.

CHAIRPERSON SEGALOFF: What was done here, from what information we have, by the consultant in preparing this exam was that he started out with a – or used a job analysis questionnaire which they had developed and apparently provided to all the Lieutenants and all the – the sitting Lieutenants and sitting Captains and got

back, as I under – from what I can see here, a response from most of them. And then he went outside of at least the New Haven area, in one case to – outside of it, to Atlanta, in another case to a city apparently north of Connecticut.

I guess what I'd like to hear you say or hear your opinion – is that – other than the fact that [20] maybe there should have been, in your view, some more input, if you will, from the local people, what else do you see maybe could have been done differently that would have – and would it changed – in your opinion, changed the result here, this adverse impact that we've got?

DR. HORNICK: Would what have changed my opinion? Within your procedure –

CHAIRPERSON SEGALOFF: We possibly – if we had done what you suggested – and I'm not – believe me, I'm just – we're just trying to get a sense of your opinion. I'm certainly not trying to trick you. But what I'm trying to understand is that from what I heard you say is that it – one thing that appears to you that did not happen here is we did not get local participation in the sense that you've maybe seen it in other communities in developing the test. Is that – is that right?

MR. WEBBER: A fair statement?

DR. HORNICK: That's an example. I'm not saying that that caused it.

MR. WEBBER: Okay.

DR. HORNICK: Adverse impact in what we call cognitive skill testing has been in existence since the beginning of testing in our profession. There are – [21] there is information and literature out there that has helped to identify ways to minimize some of that. But it's going to – it would be very difficult for a psychologist, even someone like myself, to look at each individual item and say – let me put this differently. There's an outdated term in psychology called face validity or facially neutral evaluations of tests. And when one looks at a test and tries to figure out if the language has some bias in it, that's a very difficult thing to evaluate. And it's not a very crucial process to go through.

What I think we ought to be ought to be talking about here is the broader issue of how your procedures and your rules and the types of tests that you are using are contributing to that adverse impact. I'm not suggesting that I/O Solutions somehow created a test that had adverse impacts that it should not have had.

MS. CAPLAN: Well, Dr. Hornick, obviously the future – we're going to have to look to the future. The City will have to look itself. But right now as a Commission, we have to deal with this particular this and whether to –

CHAIRPERSON SEGALOFF: Certify.

MS. CAPLAN: – certify it or not. So I [22] guess what we want to know from you – and you said you didn't read every single question. But – but what

are you actually – what is your conclusion when you say about the adverse impact and that you felt it was a little bit more severe. What is your conclusion? Can you give us any conclusion to our particular test? Not so much what we can do in the future, but what we can do – what would your recommendation be?

DR. HORNICK: There are other alternatives to just the written job knowledge that you used in that initial stage and to the oral interview process that I believe would have demonstrated less adverse impacts, that I believe would have increased the likelihood of getting the best candidates at the top of the list so you would have identified the best possible people and you would not have had artifacts in the development of the test that contributed to the adverse impact that you received.

MS. CAPLAN: Well –

DR. HORNICK: I mean, for example, you were not using an assessment center process, which is essentially an opportunity for candidates to demonstrate their knowledge of the, if you will, SOP's, standard operating procedures, to demonstrate how they would [23] address a particular problem as opposed to just verbally saying it or identifying the correct option on a written test.

For example, there's concepts of situation judgment tests that can be developed and designed, customized within organizations that demonstrate dramatically less adverse impacts that are very well received by candidates that test the ability to apply

their knowledge as opposed to just memorize and give the correct answer from a multiple choice, recognizing what's the correct answer from a particular reading source.

So there's other procedures that I think might serve your needs better.

With regard to the question all-or-none, do we certify the test or do we not certify the test – how does the expression go? You're darned if you do and you're darned if you don't.

The newspaper articles that we have seen indicate that there are threats of lawsuits regardless of what approach you take. I think you need to weigh what your values are and go with the best possible decision.

There is adverse impact in the test. That will be identified in any proceeding that you have. You will have industrial psychology experts, if it goes to [24] court, on both sides. And it will not be a pretty or comfortable position for anyone to be in.

I think what we ought to be doing is perhaps looking at a way to utilize the investment of your resources already. You've done the test. It appears to be a reasonably good test, although it does have adverse impact. So perhaps the only choice you will have in the end is to certify the list as it exists and perhaps only use it for the minimum that's required by your rules and look at a process where all of the different groups can weigh in and be involved in the

decision to look at some other alternative ways to deal with these issues. Rewriting the Civil Service Rules, if necessary, that have everyone's input so that we come up with a process that gives a more valid way of identifying candidates in the future while also minimizing disparities that typically occur between ethnic minority performance on these types of tests and Caucasians.

Does that help at all?

MR. WEBBER: No

MS. CAPLAN: No. We understand all those reasons. And we've ourselves thought about that for the future. But right now we're dealing with what's in front of us. Obviously, Civil Service reform is something that [25] has to be talked about in the future. But we're not dealing with it right this moment. We really wanted to take testimony from you and a few other experts on the test and on disparate results, adverse impact, and particularly this test.

CHAIRPERSON SEGALOFF: I'm wondering if on the oral part, Dr. Hornick – as I understand it, there were three assessors and they were from out-of-state and there was generally an attempt to make one Hispanic, one Caucasian and one African-American sitting as assessors. Do you have any comment on that? Or is there a different way it could have been done or a better way or some other concept that's used? I understood you talked about maybe in some way testing leadership or skills in a – in a little different fashion. But could you help us on that part of the exam?

DR. HORNICK: I think there are other ways to identify those skills. But the composition of your oral boards I don't believe can be called into question. You had – from the information I had received, you had very good diversity in the representation on those panels. And I don't think that's a concern or issue that you have.

But, yes, I think a person's leadership [26] skills, their command presence, their interpersonal skills, their management skills, their tactical skills could have been identified and evaluated in a much more appropriate way that would have tested their real skills and not necessarily their ability to in two-and-a-half minutes describe.

This is a – this is really not the place in this phone call to talk out some of those alternatives. But I think there are much better procedures for you to be able to identify those skills.

But I do not think that the composition of those panels was a problem. No.

CHAIRPERSON SEGALOFF: I – Mal?

MR. WEBBER: Yeah. There's a mixture of administrative expertise and expertise within the fire department fighting fires in the test. Did you think the mixture was correct?

DR. HORNICK: I haven't seen the job analysis data.

MR. WEBBER: Okay.

DR. HORNICK: There were two different tests. Right? One for Lieutenant and Captain. So I'm not prepared to really answer that. If (Indiscernible) of the job analysis and the weighting of the items was [27] done appropriately, then I would guess the weight that the consultant identified would have been the correct one. It appears – and, again, I have not studied these items in any detail. It did appear to have some pretty complex descriptions, for example, for the tactical items, which would make it difficult for someone to really interpret and understand that without other information. For example, pictures to help identify what it is that the words are trying to describe. And maybe that contributed to your adverse impact. That's pretty hard to judge from here in Denver with only having had a little bit of time to look over those actual exams.

Did I answer your question?

CHAIRPERSON SEGALOFF: Sure. Yes. Did you answer my question?

MR. WEBBER: Yes. Yeah.

CHAIRPERSON SEGALOFF: Okay.

MR. WEBBER: What you could do with it.

CHAIRPERSON SEGALOFF: Okay. Any other questions?

We're all set, I think.

MS. MARCANO: I just want to correct for the record that the procedures that Dr. Hornick talked of earlier –

[28] CHAIRPERSON SEGALOFF: You mean the 60/40?

MS. MARCANO: – insofar as 60/40 is not mandated by our Civil Service Rules but an agreement entered into between the Fire Union Local 825 and the City back in the mid-80's that we're still operating under.

CHAIRPERSON SEGALOFF: And that's the 60/40 split for –

MS. MARCANO: Correct.

MS. CAPLAN: Yes.

CHAIRPERSON SEGALOFF: Okay. I think we're all set. Thank you very much. We appreciate that you made yourself available on such a short notice. And we thank you.

DR. HORNICK: Okay.

CHAIRPERSON SEGALOFF: If you'd like to add anything to sum up or any other points of view that you think are helpful, we're happy to hear it.

DR. HORNICK: Okay. Well, I think there are a few things that maybe came through in this. Do you want to talk about recommendations for the future? You seem to want to focus this more on –

CHAIRPERSON SEGALOFF: We're just trying to, at this point, deal with the present.

[29] MR. WEBBER: The present. We've got enough.

CHAIRPERSON SEGALOFF: Which we have to deal with. It might be very helpful once this is all completed that we enter into some discussions about the future. But right now, I think we're just getting through the present.

DR. HORNICK: I certainly would offer any help that I could give you here. I think there's not a lot that we could do at this point on our end other than serve as advice, in an advice capacity if we can. So, again, I think there are some things that we need to look at for the future. And we certainly would like to help you if we can in that regard.

CHAIRPERSON SEGALOFF: Okay. Thank you very much.

MR. WEBBER: Thank you.

CHAIRPERSON SEGALOFF: Good night.

(Whereupon, the phone call was concluded.)

CHAIRPERSON SEGALOFF: Do we have an agenda of speakers in terms of –

MS. CAPLAN: Yeah. Here it is.

MS. BURGETT: Mr. Lewis is next.

CHAIRPERSON SEGALOFF: Okay. Mr. Lewis?

[30] MS. BURGETT: To be followed by Dr. Helms.

CHAIRPERSON SEGALOFF: Okay. Mr. Lewis, step right up please. Just please give us one second. I think it –

MS. TIRADO: We do have a binder here that has credentials for Mr. Lewis.

CHAIRPERSON SEGALOFF: He could tell us about himself, I guess. I don't see any reason why we shouldn't follow the same procedure.

MR. WEBBER: Procedure. Exactly.

CHAIRPERSON SEGALOFF: What – so why don't you tell us –

COURT REPORTER: Are you going to swear witnesses or not?

CHAIRPERSON SEGALOFF: I don't think we need to swear – I don't – Tom? No. I mean I don't think there's any need to swear witnesses.

MR. WEBBER: No.

CHAIRPERSON SEGALOFF: No.

Sir, why don't you tell us a little bit about yourself and how that relates to what we're trying to do here today?

MR. VINCENT LEWIS: Okay. First of all, my name is Vincent M. Lewis. I am a –

[31] A VOICE: Can you speak a little louder? We can't hear you.

A VOICE: Yeah. This one's not on.

A VOICE: Give him a mike.

MR. LEWIS: Can you hear me now?

CHAIRPERSON SEGALOFF: Yes, sir.

MR. LEWIS: I've been waiting to do that.

Okay. My name is Vincent M. Lewis. I am a former career firefighter from Michigan. I served 23 years on the department there and retired out as Arson Captain. I served in the Fire Prevention Bureau. I served in a number of other offices. I'm a twice-appointed public official as well. And currently, I am the Fire Program Specialist for the U.S. Department of Homeland Security. I'm an Arson Specialist. That is my background and that's what I do.

As relates to what I do – what I'm here for this evening, I just want to say I had a chance to look at both exams, extensively at the Lieutenant's exam and a little less extensively at the Captain's exam because of the time frame. So I'm prepared to answer some of your questions or most of your questions.

CHAIRPERSON SEGALOFF: And you've gotten some information about what has been going on in this [32] process and –

MR. LEWIS: Yes.

CHAIRPERSON SEGALOFF: – some of the issues we've been –

MR. LEWIS: I've seen some documentation –

CHAIRPERSON SEGALOFF: – exploring.

MR. LEWIS: – on what's been going on. And one of the things that was reported is that my name is Dr. Vincent Lewis and that's not true. My name is just Vincent Lewis.

CHAIRPERSON SEGALOFF: We have no doctors sitting right here. So that's –

MR. LEWIS: Okay. Just wanted to make that sure.

CHAIRPERSON SEGALOFF: That's fine.

MR. LEWIS: I have a Bachelor's Degree from Detroit College of Business. I have a Master's Degree from Central Michigan University and a concentration in human resources.

CHAIRPERSON SEGALOFF: Have you had an opportunity to deal with this whole testing process and testing issue over the years?

MR. LEWIS: Yes, I have. I've taken a number of promotional exams where I'm from, a city [33] similar in size and demographics to New Haven. And then I've been into another – other cities and looked at their exams as well.

CHAIRPERSON SEGALOFF: Okay. And you heard how we proceeded with Dr. Hornick. We're happy to get your impressions on what you've seen and what you've heard.

MR. LEWIS: All right. Let me just speak to the Lieutenant's exam first. I had a couple of questions. And they're not for the Commission to answer. Just something that you might want to ponder.

There are several references made to the fire department company officers manual. And –

CHAIRPERSON SEGALOFF: We're on a careful line here. I think that's okay.

MS. CAPLAN: Oh. Yeah.

CHAIRPERSON SEGALOFF: That's fine. But we just have to be careful we don't get into a specific question.

MR. LEWIS: Oh, no. That's not a specific question.

CHAIRPERSON SEGALOFF: I understand.

MR. LEWIS: Just the manual itself.

CHAIRPERSON SEGALOFF: Right.

[34] MR. LEWIS: And my only question would be were those materials available for everyone at the same time. And that's not for you to answer. That's just put out there.

In looking at some of the articles that I read, everyone didn't have access at the same time to the materials. That may be just something that you should consider.

A second question I looked at or pondered was the time it took or the availability for – or the eligibility of a person to take the Lieutenant's exam. And I understand they had to have 36 months on the department and then they became eligible.

And the reason I ask that question is because a lot of the questions or a number of the questions on the Lieutenant's exam dealt with issues that an apparatus driver needed to know. And if a person, an individual who had not had the training or had not had an opportunity to drive the apparatus, they may not be aware of those questions. That put them somewhat at a disadvantage. If they didn't have an opportunity to drive, if they were not a driver, if they did not receive the training, I think they were somewhat disadvantaged.

That would hold true as well, but not as [35] much, on the Captain's exam because they would obviously have to have been a Lieutenant first to be a Captain.

That would be my only questions on that.

I would say on the oral portion of the exam, because the boards were made up like they were, I would agree with the first speaker that they are probably not questionable because they had to come

to a consensus to get their final scores. And you did use a procedure which looks pretty much beyond reproach. So I would be comfortable with the way the oral portion of the testing was done. And you should feel comfortable as well with the way it was done. And that would true again for the Captain's exam as well.

Okay. With respect to the Captain's exam, I found it to be an exam similar to exams that I've taken before. I found that most – the candidates who were taking that exam should know that material. It should have been – as long as it was readily available, then it should have been – it should be a good test.

CHAIRPERSON SEGALOFF: Okay.

MR. LEWIS: Other questions?

CHAIRPERSON SEGALOFF: Do you want –

MS. CAPLAN: Yeah.

CHAIRPERSON SEGALOFF: Go ahead.

[36] MS. CAPLAN: Mr. Lewis, did you feel that most of the questions, if you had the book, the books to study – because on – I don't want to get into the actual questions. But if you had the study materials and most of the questions came from those books, do you feel that the Lieutenant's exam and the Captain's exam were fair in the questions they asked for both, for both the written and the oral?

MR. LEWIS: I felt the questions were relevant for both exams. And I would be comfortable taking them. I would even say that the way that the material was handed out, the way that I read the material where it listed certain chapters, that was – would have been most helpful. In the exam that I've taken, chapters were not listed. You were given a list of books and you had to know basically the entire – entire book.

CHAIRPERSON SEGALOFF: Do you have a – I don't know whether it's an opinion or a thought on why there was such a disparate impact, why we had so many proportionally, percentage-wise, minorities did significantly poorer than Caucasians? Is there – can you explain that to us in your – from your experiences or what you read or why that happened?

MR. LEWIS: I don't want to speculate. I [37] would say that I would agree, again, with your former speaker. That has been some of the pattern that usually whites outperform some of the minorities on testing. That has been a pattern in the tests that I've taken. But that would be for a number of reasons.

One of the reasons would be that there are more whites who take the exam. So, obviously, they would come out better, the more of them that take the exam. Again, without speculation, as long as all of the testing materials were available to everyone who had a chance to take the test at the same time, everyone should have done better than what they did on the exam.

I think what the Commission ultimately has to do is to make a decision on what's best for the framework for New Haven and best for the citizens of New Haven. That's a decision that would rest with the Commission.

CHAIRPERSON SEGALOFF: From your experience with other testing, the method, the methodology that was used here, if I'm saying it right – for instance, in designing this test – let me – in designing the test, as I understand it from what we heard before, the consultant went out and contacted Lieutenants and Captains who were sitting, gave them questionnaires, [38] got the questionnaires back, went and talked to two other outside – to two outside people. I don't know that there was – I don't know how – there was a fair amount of thought given apparently to designing the test. But I think that was the basic approach. Does that strike you as an appropriate approach? Is there something maybe you would have done or would have not done if you were – from your experience in taking tests – designing a test?

MR. LEWIS: No, it does not. That – again, looking at the exam, I thought there may have been maybe only one question that I could think of that you may have been a little unfamiliar with taking the exam. And it was relative to a direction on the exam. But it was not so far out that I thought someone taking that exam who was – who had the right testing materials, the background, the books and the literature, should have known that. I mean maybe –

and this is – this was not on the exam. But as an example, perhaps we talked about something being on South Street. Well, maybe there's not a South Street in New Haven as opposed to, you know, being East or West Street. But that shouldn't have hindered or been a cause of concern. I thought the methodology was fairly good. And I felt fairly comfortable looking at the exam, that I could pass [39] either/or exam.

MS. CAPLAN: Mr. Lewis, in the city that you are from in Michigan, has – in the past, have there been exams, fire exams, that have had a disparate impact? Maybe not exactly the same as ours. But have you seen that happen?

MR. LEWIS: Yes.

MS. CAPLAN: And how has your city handled that?

MR. LEWIS: Well, where I'm from they were bound by, as I believe you are, a union contract. At one time, they had two lists where they promoted one from each list. You had to promote a minority from this list, a Caucasian from this list. So if you promoted one, then the next promotion had to be a minority.

We also had, as you do, I believe, here, the rule of three where those persons who qualified as passing the exam were put in a pool and then the appointing officer could choose anyone in that pool and thereby bring in the issue of diversity. Once everyone had qualified, if every – if passing was 70 and you got 20

people in and above 70, then he could choose – or he or she could choose anyone in that pool and create diversity, if diversity was an issue for the [40] administration.

CHAIRPERSON SEGALOFF: Anybody have any other questions?

MR. WEBBER: No.

MS. TIRADO: I do. Dr. Hornick was his name?

CHAIRPERSON SEGALOFF: Yes.

MS. TIRADO: Dr. Hornick and you both indicated that historically minorities – whites outperform minorities on standardized tests. Can you offer a reason as to why that is? And if so, how then do we rectify that? Do we have to offer two tests? Or how do you reconcile that?

MR. LEWIS: No, I wouldn't recommend that you offer two tests. I would merely say – and like I say, it has happened to me on a number of occasions. But I can't speculate to say why it's happened. I can't tell you without just reaching out and just grabbing something. And I wouldn't want to do that.

MS. TIRADO: Okay.

MR. WEBBER: Could you –

MR. LEWIS: Yes?

MR. WEBBER: The test does contain a mixture of administrative questions and questions that [41] would be specifically towards firefighters only. Do you think the mix within this test was correct? Or was there any stress either way that you would particularly see?

MR. LEWIS: Again, I would say in the Lieutenant's exam I thought there was quite a heavy emphasis on issues that only drivers of an apparatus would be more familiar with.

MR. WEBBER: Yeah.

MR. LEWIS: And if you were a new firefighter, three-year, four-year, five-year – I don't know. If you hadn't had a chance to drive, if you hadn't been trained in driving the apparatus and using the equipment, there are going to be some issues there for you on that Lieutenant's exam. You're definitely going to have some difficulty.

In some of the material that I read, training was an issue. I don't know how training is done here. I don't know what's required. I don't know when is it required. And I don't know who gets training when. But I understand that training is not all on a level playing field as it should be. And those trained the best, those with the right materials, they will do the best.

CHAIRPERSON SEGALOFF: On that note, [42] anything else?

MS. TIRADO: No.

MR. WEBBER: That's it.

CHAIRPERSON SEGALOFF: Okay. Thank you, very much, Mr. Lewis, for coming up here from Maryland. Right?

MR. LEWIS: Correct.

CHAIRPERSON SEGALOFF: Right. We appreciate it.

MR. WEBBER: Thank you.

CHAIRPERSON SEGALOFF: Thank you.

MS. CAPLAN: Thank you.

MS. TIRADO: I'd like to make a motion that we take a –

Dr. Helms, would you like a – did you have an opp – do you want an opportunity to take a look at the test?

DR. JANET HELMS: No.

MS. TIRADO: No? Okay.

CHAIRPERSON SEGALOFF: Okay. You're all set? Do you want to take a break? Keep going?

MS. TIRADO: Keep going. Yeah. Keep going.

CHAIRPERSON SEGALOFF: Okay. We're all [43] set. Dr. Helms? Good evening.

DR. HELMS: Good evening.

CHAIRPERSON SEGALOFF: We'll do the same format, Dr. Helms. We've got a lot of your literature. But it's pretty hard to pore through it all. But maybe you could tell us a little bit about yourself and then we'll pick up from there.

DR. HELMS: All right. My name is Janet Helms. I'm a professor of counseling psychology and Director of the Institute for the Study and Promotion of Race and Culture at Boston College. My primary area of expertise is in race and culture, particularly race and culture as they influence performance on tests and other assessment procedures.

I have served on various testing organizations, test development organizations, including – I was joint-chair of the Joint Committee on Testing Practices, which is the national organization that develops standardized tests in this country. I've also been a member of the Committee on Psychology Testing for the American Psychological Association.

My experience is not with firefighters per se but is more in the general area of how race and culture influence test performance more generally.

[44] CHAIRPERSON SEGALOFF: Okay. We'll let you pick it up from there, if you'd like to just start and –

DR. HELMS: All right.

CHAIRPERSON SEGALOFF: – respond to some of the things we're interested in hearing.

DR. HELMS: I'm pleased to hear the Commission asking questions about why there is disparate impact because I think that's an issue that has not been adequately addressed at all by the established testing community.

We know for a fact that regardless of what kind of written test we give in this country that we can just about predict how many people will pass who are members of under-represented groups. And your data are not that inconsistent with what predictions would say were the case.

But we have very little information about why it is that people of color and sometimes women perform more poorly on these devices than do their white male counterparts.

What I want to do tonight is to see if we can shift the discussion somewhat from the characteristics of the test to the characteristics of the [45] test-takers and the intersection of the process of developing tests and the characteristics of the test-takers.

One of the problems we have when we talk about disparate impact is that we talk about racial group or ethnic group or gender group as though those terms have real meaning. But we know that race – racial group, gender group, ethnic group cannot actually cause behaviors. They cannot be responsible for test scores. And so, therefore, we need to be looking at what kinds of other factors might be accounting for why it is that minorities and sometimes white women perform more poorly on these kinds of tests.

As I looked at the materials that were sent to me, I developed several ideas about what might be possible factors that are related to your testing situation.

One has to do with how the written test was developed. The procedures that were used are standard practice if one is planning to use the test with a fairly homogeneous population. That is if we had used this test only with white male firefighters, we wouldn't be here this evening because there wouldn't be any obvious problem.

[46] However, in this case, because of the under-representation of African-American and Hispanic men and women and white women at the ranks that were used in developing the test, these groups were under-represented in the actual definition of the kinds of knowledge that were needed to be able to perform well in this test.

Based on the response rates, the greatest weight in defining the necessary job knowledge was provided by white participants. 67 percent of the people who participated in defining job knowledge were white men, followed by black participants, 18 percent, and Hispanics, only 15 percent. Women didn't have any influence on defining job knowledge. It's less than two percent of the participants were involved in this phase of development.

The reason why these numbers are important is because most of the literature on firefighters shows that the different groups perform the job differently. That is white men perform the job in ways that are

different from the ways that white women perform the job and ways that are different than the ways in which African-American and Hispanic men perform the job.

This is often because the kinds of experiences that are open to white male firefighters are [47] not open to members of these other under-represented groups. I do not know the extent to which this is true of the environments here in this location. But nationally, it's a fairly well-documented issue.

Nevertheless, the point here is that in defining the job-relevant knowledge one needs to make sure that one has sampled sufficient numbers of each of the under-represented groups to make sure that their ways of performing the job have been incorporated in the evaluation process.

One also needs to assess the extent to which their white counterparts are aware of such issues and incorporate this awareness in their job knowledge and understanding of the job.

If the content of the test only – or overly pertains to the job as white men perform it, then the test is likely to be unfair to the under-represented groups because it underestimates their job knowledge and potentially overestimates the job knowledge of their white male counterparts.

There were a number of racial and gender issues that occurred to me as I looked at the data that I had available to me. In addition to the possible problems

of the test specifications – the job [48] specifications of the test, there were also questions about the testing conditions. In the newspaper accounts, many of the people who seem to be dissatisfied with the test talked a lot about the fact that different kinds of experiences were available to different test-takers.

They talked particularly about the fact there were more opportunities for training and performance in the actual roles that were tested if you were a white male than if you were members of the other groups.

Because men of color and women are often excluded from informal associations with their white male co-workers, they are often excluded from the informal mentoring that happens in these groups. There is evidence to suggest that having guidance as to how to behave in interviews, as well as other kinds of coaching, may improve test performance.

It is also important to determine whether, in fact, it was the case that different kinds of preparation were available for people depending on their racial and/or gender membership groups, as the complainants in the newspaper accounts asserted.

Finally, the situation that never receives any attention and I'm told did not receive any attention [49] in this circumstance has to do with the test-takers characteristics. No test can be a perfect measure for all kinds of people. And so it is important to collect background information so one can ascertain the extent to which that influences test scores.

I had no background information other than the racial and gender groups of the people who took the test. And I understand that that's the kind – only kind of information that's collected.

But let me suggest some other kinds of information that you might want to collect post-talk or, if not post-talk, at least in the future. One has to do with language diversity. Individuals who speak a language as their first language that is not English or a dialect that is not English often perform lower on tests that are primarily English language tests. This is because – a number of reasons. Sometimes they do because they language-switch during periods of stress. And so they're unable to function as efficiently during the test as their monolingual counterparts. Sometimes it occurs because they have insufficient time to complete the examination. But there are a variety of reasons why having more than one language might adversely affect one's test scores.

[50] If one looks at the performance of the Hispanic test-takers, for instance, on average, they would have – they would have passed the written exam. But the oral exam appears to be the place where the most adverse impact occurred. And so one has to ask what kinds of factors were operating that influenced their test scores in that way?

We also know that evaluators may react more negatively to people who speak accented speech. And so we need to assess the extent to which that might have been the case.

There is no information about the languages, the primary languages, of the African-American or, for that matter, for the white American people who took the test. We need that kind of information because that should be factored in to how we interpret the test scores.

Test scores may be lower if the test-takers are functioning under expectations that they will not perform well on the test. We talk about that in psychology as stereotype threat, fear that they will confirm negative stereotypes about their group by not performing well. This places the person under undue stress and, rather than focusing on the test per se, they [51] expend a lot of energy in trying to do the best that they can rather than simply answering the questions.

Test-takers' scores might be lower if they are acculturated to a non-dominant cultural group as, for instance, African-Americans or Latinos often are, a group in which the customs and traditions differ from the larger group on which the test was developed. In that case, to the extent that the test reflects the dominant culture, then these test-takers may be placed at a disadvantage. We need to know more about the background and acculturation experiences of our test-takers.

Test-takers' scores might be lower if their socioeconomic status is lower than the socioeconomic status of the group on which the test was developed. This is because they are less likely to have the same

kinds of exposure to experiences the test might cover. We need to know more about that kind of experience.

Test-takers are likely to score lower if the test focuses on traditional ways of doing the job and the test-taker, in fact, uses innovative approaches. We know that it's often the case that minorities and white women must use innovative approaches to do the job because they don't receive the kind of mentoring that [52] allows them to perform in the traditional kinds of ways. So for – being survivors, they might, in fact, being penalized for their skill and ingenuity.

These are a couple of reasons or some reasons why I think we need to begin to think about not only the characteristics of the test but the characteristics of the people as they interact with the test and with the testing process.

CHAIRPERSON SEGALOFF: Thank you very much, Dr. Helms.

Questions?

I'll just ask one as a starter. You mentioned that firefighters perform the job differently. I don't know if I'm stating that accurately. But maybe you could expand on that. It strikes me that there's some performance being a firefighter that it just doesn't – isn't affected by your – by culture or race. I mean is that fair to say? That you're on that truck and you're heading down to that fire and there's someone screaming on the third floor and – and maybe I'm making it too simplistic. But culture or race doesn't

strike me that on that kind of a situation – these guys are all rushing in there to save lives. We've had some testimony about that. Is that –

[53] DR. HELMS: Well –

CHAIRPERSON SEGALOFF: – fair in some respects?

DR. HELMS: – recognize that what we are talking about is not the culture or race per se but how people are treated because of the race or culture per se. And so often what will happen is that women and men of color have to earn their way into the brotherhood of white firefighters. While they're earning their way into that brotherhood, that often means that they're doing things by themselves that their white male peers are doing collaboratively.

So we have to begin to think about how – not just that you are a woman or a person of color, but how people react to that influences how you perform your job.

CHAIRPERSON SEGALOFF: Okay.

Mal?

MR. WEBBER: There was a number of efforts on the – during the planning and administration of this test which were taken to try to eliminate racial, sex discrimination problems within the test. I am just questioning whether it would be possible to completely eliminate them. Because the minute you

move in one [54] direction, according to your testimony, you might be affecting the other level.

DR. HELMS: I – well, in a sense, you've asked me two different questions. One of the things that as I read the materials was done to make the testing a fairer process was to examine the items for stereotypes. But the fact is that stereotypes may be group-specific. And so if you do not include a broad range of people in that examination process, then stereotypes may still be there that people are unaware of. So that's one aspect of your question.

The other aspect has to do with whether there will always be racial and/or gender differences regardless of what you do. I don't know the answer to that. But my thinking is that if we were to develop ways to measure the characteristics that result from race and gender rather than just using racial category, then we could, in fact, correct scores for that kind of factor.

MR. WEBBER: Thank you. I think we're both saying the same thing; that every effort must be made to eliminate this.

DR. HELMS: I –

MR. WEBBER: But whether we will be 100-percent successful none of us can ever predict.

[55] DR. HELMS: I think that's entirely true.

MS. CAPLAN: Dr. Helms – and I'm trying to look at both sides of this whole thing that you're talking about. And as you know, the test itself, there were study materials supposed to be available. And let's say that everybody had the same study materials and that the test itself, the questions came from those books and the answers were within those study materials.

And I know that you didn't – you didn't want to look at the test itself. But are you saying – is that – are you saying that no matter what test, even other tests that the City gives, that within every test that is given there is an – is there – there is a –

CHAIRPERSON SEGALOFF: Element?

MS. CAPLAN: Element of – yeah. Element of problems with race and culture and gender within those tests. Is that what you're saying?

DR. HELMS: That's what I'm saying. Since 1896, we've always found a disparity between blacks and whites, Hispanics and whites on that kind of – on that kind of written test particularly. The disparity has been about the same. It deviates by a couple of points. But we can almost tell you what your disparity will be even before the test is taken.

[56] And so the issue is – for me at least becomes not just describing that disparity but beginning to think about what causes it. And if we can't figure out what causes it, then we need to develop a new way of assessing people.

MS. CAPLAN: Thank you.

CHAIRPERSON SEGALOFF: Could you share with us maybe some of the – I heard you talk about it to some extent. Some of the – if we concluded that this was – we shouldn't certify this exam and that there's a better mousetrap, there's a better way to do it, tell us, if you could, what would be the better way to get an exam that would be likely to result in less of an adverse impact, other than – I mean we had an approach or some comments by Mr. Lewis that talked about how they've done it in other communities in terms of selection processes from maybe – based on race.

But if we just took this, tried to make a new exam and make it better, could be do it? And how could we do it?

DR. HELMS: I think that it is, again, not so much the characteristics of the exam because essentially even the exams that the first speaker talked about had disparate impact. I think we have to begin to [57] conceptualize the process of using tests differently. So that right now what we do is we assume a test score means the same regardless of the characteristics of the people who would have taken it.

What we need to begin to do, however, is to pay more attention to the experiences of the people who are taking the test and develop means of measuring those experiences that allow us to adjust test scores to take those things into account.

To give you a more practical example, we know, for instance, that we can reduce disparate impact by knowing something about the socioeconomic status of people and taking the socioeconomic status – removing that from their scores, that reduces the disparate impact to some extent.

If we were to broaden that to include things like language, remove that from people's test scores, and other things as we discovered those to be factors that were related to that impact, then we would have a better testing process, in my opinion.

CHAIRPERSON SEGALOFF: Thank you.

MR. WEBBER: Thank you.

CHAIRPERSON SEGALOFF: I think we're all set. Thank you very much.

VERBATIM PROCEEDINGS

CITY OF NEW HAVEN
CIVIL SERVICE COMMISSION

IN RE:
FIRE CAPTAIN AND LIEUTENANT
PROMOTIONAL EXAMS

MARCH 18, 2004

KENNEDY MITCHELL HALL OF RECORDS
200 ORANGE STREET
NEW HAVEN, CONNECTICUT

* * *

[5] MR. UDE: Thank you, Mr. Chairman, [6] Commissioners. I want to start by thanking you for this opportunity to make a presentation to you, summarizing again, as I attempted to do at the outset, the relevant law and how it applies to these – the results of these examinations.

I asked for, and you gave me, this second opportunity. I asked for it because at the time that I outlined the law to you initially, we had not heard from – you had not heard from the testing consultant. None of us had heard from the three consultants from whom we heard last week. And I thought, in light of a number of things that were said during those, that

there were some points that I thought it was important to stress.

I want to start with saying that in my view both Title 7 and our Civil Service system – Title 7 being the most directly applicable federal civil rights law – have common goals. One is do not discriminate against or favor anyone based on race, ethnicity or gender. Second, make sure that equal opportunity is afforded to everyone, regardless of those same traits, so that no one is given an advantage or disadvantage when compared with someone else on the basis of those grounds.

Congress, when it passed Title 7 in 1964, said [7] Nothing in Title 7 permits a person to demand employment. The Act's primary task is to make certain that the channels of employment are open to persons regardless of their race and that jobs are strictly filled on the basis of qualification. The rights of citizenship mean little if an individual is unable to gain the economic wherewithal to enjoy or properly utilize them."

Now, Congress outlawed two types of discrimination. The first one is the one that is the most easily recognized. And that's intentional discrimination. That is discrimination where someone clearly states that people are going to be treated differently, either because of their race, their ethnicity or their gender.

The second area is discriminatory effect laws. That means a facially neutral process that nevertheless has the effect of discriminating against one group or one segment of the population.

Now, I want to point out that the definition of a law that has discriminatory effect starts with facially neutral. In other words, it is – the suggestion in some of the discussion over whether these exams were facially neutral I think is really not the point. If they were not facially neutral, we'd be [8] talking about a matter of whether they showed a discriminatory intent. It is the fact that they are facially neutral that makes adverse impact, job-relatedness and the existence or absence of other procedures that accomplish the same goals, the three issues that need to be looked at.

Adverse impact has been defined a number of different ways. And while there are – whether you look at it in four-fifths or eighty percent or statistical deviations, the key is the same. If the result is significantly different from an expected result – and the law defines an expected result as one that occurs by chance. In other words, if you've got a population that's 50/50 and you end up with something much different than that, then you have adverse impact. That's the beginning, though, not the end of the discussion.

When you have adverse impact, the federal guidelines and federal case law makes clear you cannot use a procedure that has an adverse impact

unless it is justified. And by justified, they mean that it's job-related, consistent with business necessity. And there's a second piece of that which was enacted into law in 1991 based on some earlier case law which says that if there [9] is another – if an employer is using a procedure, like a test, to select people for a particular position and there is – and it has adverse impact and there is another procedure that is just as good for testing for that position but has less adverse impact, the employer is required to use the test that has less adverse impact.

Now, I think that's an important point for a couple of reasons. First – well, let me take them one at a time. First, the job-related issue. That's what was referred to as a validation study as the most common way to review that, which is something that the unit recommended. The consultant from I/O Solutions discussed that. The question is not whether the questions are facially neutral because, as I said, everybody would assume that they were. If they were not, the evaluation process would be much simpler than it is.

The question on whether an examination is valid is is it really testing for what you're looking to test for? And I want to point out that there is a case that came down in New Jersey involving fire promotional exams where the State of New Jersey, which was responsible for coming up with the exams in that case, had administered promotional exams for either Captain or Lieutenant to various towns in New Jersey. And the Judge [10] in that case threw out the

results of those tests after promotions had been made because of some flaws that the Judge found in the test. And a couple of them I think bear pointing out.

Some of the tests tested for knowledge of terminology, such as "nozzle reaction" or "unity of command" instead of the concepts underlying that terminology, number one. Number two, a number of the questions on that test referred in the question itself to a particular source as opposed to a different particular source.

The Judge found that – in other words, it said that – sorry. The test asked, for example, "According to Firefighters Principles and Practices, blank is the quality that firefighters most want in an officer." Rendering the test, in this Judge's view, more probative of the test-taker's ability to recall what was in a particular text than their firefighting or supervisory abilities.

And I want to remind you, as I know you're already aware – but I think it bears repeating. These tests were designed to determine who is going to supervise people within a fire department. Whether the principles they're relying – there are certain facts, [11] like melting points or, you know, physical measurement, that is important, obviously, for firefighters and their supervisors to know because they need to know that and they need to know it cold in order to make the judgment calls they have to make.

But I think that when we're asking – when we're trying to determine and we're trying to measure

someone's ability to be a leader on a fire scene, it's not a – it is not as important, I would submit to you, whether they can remember that a particular book says that a particular practice is the best one. What we expect them to do is read whatever sources they are and come up with and make the call that they believe is the best call. And that's the call that we should looking and expecting from them. In other words, to review different materials. And we should be looking for, if there is a best answer, then that's fine for a multiple-choice test. But the goal of the test is to decide who is going to be a good supervisor ultimately, not who is going to be a good test-taker.

The Judge in that case also questioned whether a multiple-choice test, which is only one form of a written examination, is the best way to actually evaluate the abilities of a supervisor. I'm not saying [12] it necessarily is the worst way. But no one faced with a scene that our Lieutenants and Captains will be called upon to supervise, assess and manage is going to be presented with a multiple-choice option.

Civil rights law requires that an employer prove that the test being given is suited to selecting the best people for the job. It also requires that you consider whether the test that you're using doesn't unnecessarily disadvantage or advantage a particular group of people who are taking the test either from being selected or not being selected for the job.

When you're talking about something like accounting where the principles are clear and there's

pretty much only one way to do it, a multiple-choice exam or some other type of exam like that may be much simpler. But this isn't accounting.

It is not, as a rule, fair to change the rules of a game after the game has been played. But we're not talking about a game here. We're talking about a promotional exam that will affect the lives and safety not only of the people being promoted but the people who they will be supervising and commanding and the citizens and the public of this city.

As I said before, a finding of adverse [13] impact is the beginning, not the end, of a review of testing procedures. Where a procedure demonstrates adverse impact, you look at how closely it is related to the job that you're looking to fill and you also look at whether there are other ways to test for those qualities, those traits, those positions that are equally valid with less adverse impact.

When Dr. Hornick, the consultant that the Commission selected after his name was submitted by Local 825, the union, testified, he started to identify that there – first, that there are written examinations that have less adverse impact. I think that he said, in fact, the written exam on this had one of the most severe adverse impacts that he had seen.

He also said that there are other methods of testing, particularly for supervisory positions, that are not just equally valid but more valid and have less adverse impact. He, I think, also added that he has never had someone say that the person who

received the highest score on a written examination was the best – necess – was the best person for the job. He said that there are much better alternatives to identifying those skills. That was something that, because of time and because – and for any number of reasons, but I think [14] primarily because of time, that was not a discussion that was pursued. Nor I think at this point would it need to be because I – because currently and since 1986, there has been an agreement in place with the Local 825, the union that affects all of the personnel in the fire department with the exception of the Chief and the Assistant Chief. There's been an agreement in place for these positions which says that written exams are going to be 60 percent of the total-weight, oral exams 40 percent.

As I said at the outset, Title 7 doesn't allow us to say that that is necessarily going to be set in stone if there are other, more valid ways. However, I am not saying at this point that it is time to shift from that. I think that that is something that needs to be explored in partnership with the union and with testing consultants so that we can be sure that we are testing in ways that not only minimize adverse impact against any group but also are the best ways to test for supervisors within the fire department and possibly with other departments.

The goal of both Civil – federal law does not allow us to take a pass on this exam and wait until the next time to find a less discriminatory way. If the [15] results and our procedures under this exam would

have a discriminatory effect that could be avoided, the law says that we do not go forward with that process.

It is my responsibility to advise whether or not examinations and our Civil Service Rules will result in discriminatory promotions. It is the responsibility of Human Resources and the administration and your board to ensure that they do not.

The goal of both Civil Service laws and civil rights laws is, again, to find the best person for the job, regardless of race, ethnicity or sex, and to use procedures that are fair to everyone and truly give equal opportunity to those taking them, not just lip service to it. It is not simply a matter of just giving any old test and then whoever does best on that test is going to get the promotion.

These tests – these tests do not appear to have served that purpose as best they could. The purpose of the test, again, is to find good supervisors, not good test-takers.

You have a choice. It is my opinion that promotions under our rules as a result of these tests would not be consistent with federal law, would not be consistent with the purposes of our Civil Service Rules [16] or our Charter nor is it in the best interests of the firefighters and Lieutenants who took the exams, those who will be serving under them, those who will be served by them in the public.

My recommendation is not to certify the results of these examinations. I believe in light of the fact that we have been promised litigation regardless of whether the list is certified or whether it's not certified, not certifying is – allows the department to move forward on solid ground rather than on thin ice and it allows and ensures that there will not be promotions made that would – that could later be disallowed, as has happened in the past and as everyone, including one of the members of the department can testify, and the union president, everyone has an interest in ensuring that that does not happen.

I just want to conclude with a couple of comments from the same Judge I was referring to earlier about the court's – that court's concern, which I share, for the time and expense devoted to this matter. There were in that case, as in this one, "Qualified experts who were engaged who were engaged in this review process who can devote their time and energies to developing tests for the future rather than continuing to critique those [17] in the past. If litigation ensues, there will be much more expense and much more time devoted to fighting over the validity of these tests which I believe both on adverse impact and on their own merits are questionable. Then there will be a moving forward on finding a better way to test for these positions. Absent cooperation among all the parties, any new test may well be the subject of further litigation." And as a result, in that case the Judge pointed out that "Cities in need of permanent leadership in their fire departments, applicants who

have stood by patiently awaiting promotion and minority firefighters who have been wrongfully denied opportunity, all will continue to flounder in a sea of uncertainty. The need for judicial intervention in those matters ill serves the public and the private rights that are involved. It leads to the courts being blamed for adverse consequences which would befall successful candidates who will be denied promotion at this time because of this decision, but such criticism is akin to blaming the firefighter for causing a fire simply because he is called upon to extinguish it. What is often described as judicial activism in disallowing an examination is more accurately characterized as executive inaction."

[18] In this case, it is not a matter of executive inaction. It is a matter of executive action that has presented – that has brought the results of these examinations and the issues that they raise before this board because the issues that it raises, equal opportunity for all and ensuring that the best qualified people, regardless of race or gender, are selected, those issues are too important to ignore. They're too important to just rubber stamp and leave it to a judge or the Equal Opportunity Commission or the Connecticut Civil Rights – the Connecticut Commission on Human Rights and Opportunities to decide.

We have a responsibility. We took an oath to serve all of those laws, federal, state and our city's. And those laws are best served by not certifying the results of these examinations.

CHAIRPERSON SEGALOFF: If I might, I'd like to ask Tom a few questions. Does anybody have a problem with that?

MR. WEBBER: I've got a couple. After you.

CHAIRPERSON SEGALOFF: Is there a problem with me asking the questions?

MR. WEBBER: No.

[19] CHAIRPERSON SEGALOFF: Tom, I've got a couple of questions for you. One is there's a case that came down in December about Allen Hicksdale and Woodlot versus the City of Chicago, December of last year. As I read that case, there was a problem with an exam. The results were a disparate impact. For a variety of reasons, and I'm being a little simplistic, but the case was sent back and the instructions were essentially to provide a new exam. There was a new exam given. And the exam result essentially are the same results.

So I guess one thing I would ask you is what makes you think, based on what we've heard here sitting as a Commission, that if we don't certify and a new test is designed or another test is designed, that those results are going to be any different?

MR. UDE: There are no guarantees. And I'm not in a position to make a guarantee. And I understand – and what I would say is this. Twofold. The results of previous exams in this department and in other departments have not had this kind of a result, which is one of the reasons why these results

were so startling when they came down. These results were different. The outcome and the impact of these results is different from what we've seen on previous examinations.

[20] The distribution is different. And adverse impact analysis – and I didn't get into a lot of detail about it because I didn't want to get into the statistical side. But it doesn't just look at the pass/fail rates. It also looks at the distribution. If you have minorities passing at a decent rate but they're all bunched at the bottom of the list, that's still adverse impact because you look at the real selection rate. So that's one piece.

The second piece. In each of the exams that we've given, although it's true that there were larger numbers on some of these – on some of those prior lists, there were people from all ethnicities and races fairly high up and distributed pretty fairly across those lists.

Third, those lists were not challenged as having adverse impact, whereas we are assured that these will be.

The second thing is that the law doesn't say that you can't use a test or a process that has adverse impact. It does say that you have to be prepared to justify that. My take on that –

CHAIRPERSON SEGALOFF: We had – my understanding is the group, if you will, that is making [21] to throw the exam out has the burden of

showing that there is out there an exam that is reasonably probable or likely to have less of an adverse impact. It's not our burden to show that there's an exam out there that can be better. We've got an exam. We've got a result. If somebody – and I understand. If somebody can show us – and we're just a commission. I mean I'm not –

MR. UDE: Mr. Chair, I point out that Dr. Hornick said that. He said that there are other tests out there that would have less adverse impact and that wold be more valid.

CHAIRPERSON SEGALOFF: You think that's enough for us to throw this test upside-down –

MR. UDE: Well, there's –

CHAIRPERSON SEGALOFF: – because Dr. Hornick said it?

MR. UDE: I think that that by itself would be sufficient. Yes. I also would point out that when I – that it is the employer's burden – if this were to go to court, it is the employer's burden to justify the use of the examination, which is separate from whether there is another procedure that is as valid and has less adverse impact. They're two separate issues.

[22] And I am not as I sit here, having read the test, I am not confident that that is a test we would be able to –

CHAIRPERSON SEGALOFF: Did you read the test?

MR. UDE: I did read the test. And I – one of the reasons why I wanted to bring that case from New Jersey throwing out promotional examinations in a similar – in the same field but in a different state is because I noted some similarities between this test and that test. There were a number of questions on this test which referred back to particular sources. I'm not saying that the reference back was inaccurate. But if the goal of the test is to determine who is the best supervisor as opposed to who remembers what was in a particular book as opposed to a particular other book, which I hope is the goal of the test, then I don't know whether this test is particularly well-suited to that or not.

CHAIRPERSON SEGALOFF: Isn't that a tough burden for us as lay people? We've all read the exam. To try to develop an opinion as to whether or not those questions researched, that they do not properly test for the position of Lieutenant or Captain? I mean if you [23] look at that exam – and we're not – I don't think any of us are psychologists or – I mean – we're just regular people looking at an exam that on its face I guess I would say didn't strike me as not properly testing for that – for that position. And we had Mr. Lewis – was that his name? Mr. Lewis who is a fireman, who is with Homeland Security, sit here and tell us he looked at the exam and he thought that exam fairly tested for these positions.

MR. UDE: Well, I would submit Mr. Lewis was the only one of the three people that spoke before you who was not a professional psychologist.

CHAIRPERSON SEGALOFF: And the only one –

MR. UDE: And the only one that's a firefighter. Dr. Hornick has – is a professional testing consultant who has prepared similar examinations throughout the country. And he said unequivocally that there are better ways to test for these positions that are more valid and have less adverse impact.

And I understand, Mr. Chairman, that this board is made up of lay people who are not professionals in these areas. I would submit that I, as the Corporation Counsel, and the Director of Human Resources and the Chief Administrative Officer, who you will hear [24] from shortly, are professionals who are charged with making this our job, full-time job, to advise you on what the law is, on what the state of testing is and to try to bring before you the people that will be able to assist you in that analysis.

CHAIRPERSON SEGALOFF: I just have one last statement. And I don't mean it sarcastically. And I have a lot of respect, a lot of respect, for Tina and Noelia. They're – in the years I've been on this board, I think they are real professionals. That being said, they work, to some extent, with the – they do the hiring for the group that put the exam together. And I just – at some level, that sort of jumps out at me. We've got a couple of very fine people here. They went through an RFP. They set some ground rules. And now the view is that the test that was put together by the people they selected – that some of the,

I guess, parameters that they insisted upon just didn't make it.

MR. UDE: There are a couple of things, Mr. Chairman. One of the criteria that was included had to do with written tests that would be 60 percent, oral would be 40 percent. That was not something that had been questioned or challenged significantly, to my knowledge, prior to the results of these examinations.

[25] I think one of the things that – and I think while it might have been desirable – no. It would have been desirable had it been done beforehand than after. One of the realities of life is that until it is apparent that something is not working or something is wrong, you don't do that kind of examination. Nobody goes to the doctor if they're not feeling sick.

And the selection process for this was, to my understanding – and Ms. Burgett will be able to talk about this in a little more detail – was similar to the process that we have used on a number of other exams successfully. However, the fact that the process by which the consultant was selected was satisfactory and complied with doesn't mean that the consultant did a good job.

And I'm not necessarily saying they did a bad job. I'm saying that we, as a city, as an employer, who, if the exam results are certified, would be faced with going to court to defend the process. The same people that selected I/O Solutions, the same people that oversaw this process, would be the ones charged with

defending it, do not believe that that is the appropriate course of action.

And we don't – I can assure you for [26] myself – and I'll let Tina Burgett and Karen Walton speak for themselves. But it is not by any stretch something that I do lightly. It is clear from the testimony of everyone who took the test, notwithstanding remarks made by some representatives of some firefighters – my understanding from everyone that spoke publicly or privately to people is that they studied hard, they spent money on the books and they tried hard. The question is not whether they failed. The question is whether the exam failed them.

CHAIRPERSON SEGALOFF: Thank you very much.

Go ahead, Mal.

MR. WEBBER: If my memory serves me correctly, over the past – if my memory serves me correctly, over the past ten years we've had some two tests for Captains and Lieutenants, two Civil Service tests, neither of which were challenged, both designed by the same people, I believe.

MR. UDE: No. I believe they were designed by other consultants. I believe the other tests were designed by other – by different consultants.

MR. WEBBER: Can you tell me – or perhaps Tina can. But is there any significant difference in [27] this test compared to the two which were –

which have been accepted so readily by the community over the recent past?

MR. UDE: Other than the adverse impact that is clear from this test, I cannot because I have not – I've reviewed these, the two tests at issue here. I have not reviewed the previous tests. So I can't speak to those.

I – what I can say is that there was no challenge to their validity nor, to my knowledge –

MR. WEBBER: Any adverse –

MR. UDE: – did anyone – there was – the – there may have been some degree of adverse impact but it was much – much less than what was shown here. And, again, as I – again, adverse impact starts – not that there isn't a review, anyway, because I believe – because there is. But adverse impact triggers – significant adverse impact, in particular, triggers a much closer review, a much closer examination, because it's like setting off a warning bell that there may be something wrong. May be. Not necessarily that there is, but that there may be something wrong. And that's what triggers the closer scrutiny of job-relatedness and also is there another way that's just as valid that has less – [28] that would have less of an adverse impact? And if there is, if the answer to the first one is no or if the answer to the second one is yes, then the path is clear. The choice is clear.

CHAIRPERSON SEGALOFF: Anybody else?

One last question. I want to be clear on this. One of the threads that goes through this every meeting is someone, either explicitly or implied, tells us that they're going to bring a lawsuit, that there's going to be some litigation. I just want to be clear from your presentation, Tom, are you suggesting in any fashion that the possibility of litigation or probability of litigation or likelihood of litigation should factor into our decision-making?

MR. UDE: I think that it is an area of concern for the City as a whole as to whether – certainly any litigation is a matter of concern. But should it influence your decision? If you believe –

CHAIRPERSON SEGALOFF: And if so, how and why?

MR. UDE: If you believe that you're making the right decision, then that is the decision that you should make, even if it is going to lead to litigation. My point about litigation ensuing is that

* * *

[34] MS. BURGETT: First of all, let me say thank you. And before I begin, I do want you to know that I also have taken the time to read the exams and go through the questions in detail and have some discussion with the chief examiner when I had a question about a question.

In November and December of 2003, the City administered promotional exams prepared by I/O

Solutions. For every applicant, these tests were the culmination of months of work. We had all heard that when this board met in the new year it would certify test results, paving the way for promotions to the positions of Lieutenant and Captain of the department's most qualified.

These have been grueling weeks since January for each of you, for members of the administration, the Chief of the Fire Department and his Assistant Chief and, of course, most importantly, for every firefighter in this room and in every house across the city.

When the Board met initially in January, it was provided a report from the chief examiner [35] regarding this and previous promotional examinations. This report has led to an unprecedented review of the exam and its results. The Board itself has held two public hearings and three meetings since January. You have heard from three different and distinct individual experts, consultant to uniform service testing and a leading assessment psychologist, as well as having read the exam yourselves.

Chad Legel of I/O Solutions spent time detailing the exam process, its development and its implementation. You have heard from firefighters their personal stories of the sacrifice every family made, the financial resources everyone expended and the amounts of time everyone spent studying.

Yet, the end result on these two exams is always the same. We are still left with significant adverse

impact that cannot be accounted for. A unique demographic distribution in scores that is, indeed, different from previous promotional exams.

These exams will impact not just current Lieutenant and Captain vacancies but future promotional opportunities as well. Fewer African-American and Latino Lieutenants will affect the diversity of those sitting for the next Captain's promotional exam. Still yet fewer [36] African-American and Latino Captains will affect the diversity and be able to sit for those sitting for future Battalion Chief exams and Deputy Chief exams.

And as Chad Legel told City administrators, he did not understand why there was such adverse impact. It was, he suggested, perhaps simply an anomaly. Neither could Chris Hornick. Dr. Hornick stated that some of the adverse impact was fairly typical, yet some was not and that the test showed significant adverse impact.

The president of Local 825, Pat Egan, is correct when he reminds us that there has been adverse impact in other examinations. The results of previous exams were not as stark nor were they challenged.

During Dr. Janet Helms' testimony, she stated there is very little national data as to why minorities perform less well on standardized tests but nonetheless national data continues to show adverse impact for people of color. Standardized cognitive exams measure knowledge but they do not measure ability or skill.

According to the Charter of the City of New Haven, the Personnel Director or myself is to prepare, conduct and score examinations of qualified [37] applicants for all positions in the classified service and to certify those results thereof to the Civil Service Commission. I cannot do so.

There is less evidence that all the applicants operated from the same level playing field of skill, competency, training, education and mentoring. Upon close reading of the exams, the questions themselves would appear to test a candidate's ability to memorize textbooks but not necessarily to identify solutions to real problems on the fire ground.

Dr. Hornick started to point out that alternative testing does exist, including alternative written exams, that have less disparate impact.

The initial data first identified led us to closer scrutiny of the exam and the exam process. That scrutiny triggered questioning of whether other testing procedures exist that are equally valid but with less disparate impact.

Finally, upon closer review of these two exams, their content has raised, rather than answered, questions about how valid these tests are for the purposes intended.

We believe that equally valid, less discriminatory alternatives to this test exist. And it [38] would be irresponsible of me not to urge you to pursue such

alternatives. And that is the heart of the question before us.

Merit-based testing must ensure not only a fair job-related test for all applicants without resulting in disparate impact but, also, that the most qualified candidates are selected. We do not have such results in these two exams. I urge you not to certify.

CHAIRPERSON SEGALOFF: Tina, I have a question about the exam per se. One thing I'm hearing to some extent from me, I think, and Tom – clearly, one thing we're hearing is that as important tests for leadership skills, these are leadership positions. You've got men and women under you that you're leading, if you will. And that's important.

But it seems to me that the other part of the exam, which is the multiple choice, is sort of being dismissed as "Well, that's just memorization". As I looked at the exam, it very clearly said, "Okay. From the following handbook, here's the following 15 questions." It didn't necessarily strike me that it was solely memorization. But there were some questions that it appeared to me as questions were being asked that, in fact, it was important to know those answers from a [39] technical standpoint, leadership being important. But am I – tell me about that.

MS. BURGETT: I don't disagree with that. There are a number of tactical questions. And, first of all, I am ill-equipped to –

CHAIRPERSON SEGALOFF: You didn't see the exam?

MS. BURGETT: I did. I've seen the exam. I'm talking about the tactical questions. There were non-tactical questions in the written examination. It is a very standard cognitive examination, written examination. Multiple-choice tests often are. And I know we cannot discuss the questions in open session. But what I would at least observe, there were a number of questions where I thought the difference between an "A" or a "D" or a "B" or a "C" or what have you was so minute that unless you had literally memorized that sentence, you could not necessarily have answered that question in particular.

Again, I want to emphasize I am not speaking of tactical questions. I'm not prepared to say that – I agree it is important for someone to know the temperature of such-and-such or how long something needs to be. I'm not disputing that.

[40] But there were other questions in that exam that were not tactical in nature. And those are the ones that I was particularly concerned about as I read through yesterday.

I think Dr. Hornick has begun to suggest that there are some different ways of doing written examinations. It is not so much that one throws out everything one knows about testing, but that there are more best practices around testing that need to be looked at, including more behavioral-based written examinations.

CHAIRPERSON SEGALOFF: I just have to ask this because Hornick is suddenly becoming that guru that the union has selected –

MS. BURGETT: Right.

CHAIRPERSON SEGALOFF: Obviously, I don't know why. But it's interesting phenomenon that the union selected him and the City keeps quoting him as a person that we should rely upon more than anybody else that this test is a better way – a better mousetrap.

Did Hornick do any – I don't have it in front of me. But did Hornick do any testing for the City of New Haven prior to this?

MS. BURGETT: No. No. The name of his company, CWH Consultants, has not responded to a bid that [41] we put out in the past. So he has not done any testing –

CHAIRPERSON SEGALOFF: Not responded to any of the –

MS. BURGETT: No. No.

CHAIRPERSON SEGALOFF: Okay.

MS. BURGETT: That doesn't mean we were sending them to the correct –

CHAIRPERSON SEGALOFF: Oh, no, no. I understand. I just – I want to look at my notes to see more about Hornick –

MS. BURGETT: I don't want you to misunderstand that I do not think that Dr. Helms or Mr. Lewis were equally as important.

CHAIRPERSON SEGALOFF: No. I understand. I mean I hear you.

I don't have anything further.

* * *

[62] CHAIRPERSON SEGALOFF: If everyone is ready, I think the way we'll approach this – first of all, I would suggest that what we're going to do is someone make a motion to either accept or reject this exam and we'll have a second, if there is a second, and then we'll have discussion.

But maybe prior to that, if anyone feels they want to make a statement of any sort, certainly they're willing to be heard.

MS. CAPLAN: I just want to make a statement that this is my own statement. It is not a reflection of the Commission. So it's a personal statement.

I'm going to read you this statement right now. If this particular case regarding the eligibility of the promotional exams for Lieutenant and Captain in the fire department that has been before us for the last three months does not cry out for Civil Service reform, then nothing else does.

In the few years that I have served as a [63] Commissioner on the Civil Service Commission of New Haven, some things have become remarkably

clear to me. There are smart people in the City administration, your Corporation Counsel's Office and the Human Resources Department and in the Fire Department. My colleagues, who are all appointed, unpaid people doing a public duty on the Civil Service Commission are intelligent people of the utmost integrity and concern for the well-being of the city and its people.

But the Civil Service laws that we all have to work with are archaic and somewhat Byzantine. What needs to be done is something the committee cannot do, but what the City and its able staff can begin to do and I feel must do; start the process of Civil Service reform that should have started years ago.

If you establish that the only way a fireman or firewoman can get promoted to Lieutenant or Captain is to be by exams and if you have ensured that the $100,000.00-plus test is as fair as it can be in every way, how can the City then ask that to be thrown out because it does not like the results?

You all agree that the results of this test are disparate in that more whites passed than minorities. The City acknowledged that it did everything [64] for the test to be fair, hired a test-giver with excellent credentials, had pre-assessment done in the city before the test was written, and the test itself had every question coming from the books that were used for study.

We all can have no idea if that test was given again what the results might be. If the results are the same, are we going to throw out every single exam? I say no. The answer that you want to change the racial disparity in the fire department and other departments is you have to find a better solution in the future.

Civil Service was introduced to public management in the U.S. in 1883. All 50 states adopted Civil Service since that time. But it has become very apparent that Civil Service Boards have become an obstacle rather than the solution for cities and states.

A large number of cities and states have adopted Civil Service reform. Some of them are right here in Connecticut. Three states, Florida, Texas and Georgia, have totally eliminated Civil Service. I urge the City, Mr. Chairman, to read and study these reforms.

I feel very strongly that we should have a more diverse fire department both at the entry and [65] promotional levels. It cannot be done by saying that the Civil Service tests are standing – throwing them out when the results are not what is wanted and then not looking for reform in the future.

I ask the City, the Mayor, the Chief Administrator, the Corporation Counsel and City's attorneys, the Chief of the Fire Department, heads of all the City departments, to revamp and reform the current system. It needs to be done on our own city's history so that the healing process in this case can begin and that we can find a better solution.

I know whatever decision is made by my fellow Commissioners that they are the most fair and just people who have worked hard to make this decision on their own for this important matter.

Thank you.

CHAIRPERSON SEGALOFF: Zelma, do you want to make a statement?

MS. TIRADO: No.

CHAIRPERSON SEGALOFF: Mal?

I'd like to say publicly (indiscernible) similar to what Francine –

(Interruption in taping)

CHAIRPERSON SEGALOFF: I started to say a [66] small portion of it may be similar to Francine's view. My guess would be that probably all of us here – and I would probably guess almost everyone out there would agree – that that is – I know there's been other public cases in other communities where there's been very difficult issues similar to this, even more difficult. And they have established – I'm just looking at Chicago. The city established the police department's promotion testing task force. Do good work, but earlier Blue Ribbon panel met and made recommendations regarding selection procedures with the police department for testing, reassess the status of promotional processes and made recommendations to the city of possible different types of examinations, et cetera.

We've said over and again none of us here have any expertise and in designing test exams. I do think it sort of calls out here for us in some fashion to put a group together, whatever is decided here, to try to deal with this issue in a – with a large – in a larger manner than the way we've dealt with it before.

I want to make a couple of other observations. These are all – well, one is personal. And that is that I don't give any credibility personally to somebody sort of claiming innuendoes we've heard [67] bounced around here about a variety of issues. And it won't affect my decision.

One, the result is that some people studied and some didn't bother to study. I've sat here at public hearings. There's no credible evidence at all that these results came about because a group of people really didn't make the effort and didn't study. So that's – I get terribly insulted. But, beyond that, there's evidence of that whatsoever.

Secondly, there is no evidence that I've heard, credible evidence, of people cheating, of taking reference material in advance of others, of being provided questions in advance of tests. Those are very serious allegations. And there's nothing that I've heard here that would convince that that went on.

If I did hear that or I was convinced that there was those kinds of violations, then how could I possibly certify a test with that kind of behavior? So that – I just have to stress that because that wasn't seen.

And I think – I'm sure that everybody sitting on this Commission believes very, very deeply – and you look at some of our histories on how we did and what we've done in our lives, I think you'll see that the [68] statement is true. Everyone of us believes deeply in the importance of diversity and a diverse – you have a diverse community and a diverse fire department. And whatever decision is made is no reflection on our commitment or interest in seeing a diverse fire department.

And there was one poem that I read in one of these cases that really sort of hit me. "The effective participation by members of all racial and ethnic groups in the civic life of our nation is essential, is the dream of one nation, indivisible, is to be realized. The benefits" – and some of these cases go on and I believe, every word of this. "The benefits of diversity are substantial. And it's even more compelling, the need for diversity, in a metropolitan area (indiscernible) important to have a diverse fire department, whatever decision we very much believe that.

I don't have anything further as a statement.

Anyone else?

Well, I guess we should – I would suggest that we just start off with a motion either – I'm not sure where everybody is on this. Do you want to make a motion?

[69] MS. CAPLAN: I make a motion to certify the exams.

CHAIRPERSON SEGALOFF: Do we have a second?

I'll second.

You know what we should do? We should declare there's two exams. So why don't you just start off with one of them?

MS. CAPLAN: I make a motion to certify the Lieutenant's exam.

CHAIRPERSON SEGALOFF: I'll second.

Why don't we have discussion to the extent that anybody wants to say anything. This is an open forum.

MR. WEBBER: I consider this call a very narrow one. I originally was going to vote to certify. That was my original feeling before we got into the testimony. But I've heard enough testimony here to give me great doubts about the test itself and the testing – some of the procedures. And I believe we can do better. In fact, it's been testified in front of us tonight by the Human Relations Director of the City that we can do better.

Therefore, I will vote No on this motion [70] in order to move forward a deeper research and a complete study of how we're giving these exams because of the complete and rather horrifying disparate result of this particular examination.

CHAIRPERSON SEGALOFF: Any other –

MS. TIRADO: I also feel that the process was flawed, with the test as part of that process. I also think the test was flawed. So I'm also going to vote No, that we do not certify the this.

CHAIRPERSON SEGALOFF: Well, this looks like it's going to be two/two. But I'm going to speak in favor of certifying today. I feel it's important I need to – I think Tom Ude's advice to us and thoughts to us from a legal standpoint was very, very helpful to us. And I really agree that he captured what the legal issues are. As a lawyer, I can't help but think in a lot of those terms. At the end of the day, though, I come out with a different conclusion than Tom. And I just have to share that.

I think that, clearly, as said at the outset, this result is not helping, it's not (indiscernible) diversity at this point. But I've got to do – I can't just stop there, obviously, and say, "This is bad." So, let's do another another tests. So I try [71] to follow the lines that I've read from other cases that Tom has instructed us to look at. And that is that there is a disparate impact. That's an easy. Secondly, the issue of the exam being job-related, I, as a lay person, I can't sit here and find that this exam was not job-related. I read the exam. I listened particularly to the firefighter who came from, Maryland, Mr. Lewis, who said the exam was fine.

And I didn't really hear any testimony that compelled to say this exam was not job-related and, therefore, we should throw it out.

So I think, to the final issue, as I understand the law and as I will quote in a case – this was one case that came down last month in Chicago – a couple of months ago that did not throw out the exam. It said, "The remaining issue is by the existence of a substantially equal, valid, less discriminatory alternative employment practice or employment test." And the burden is on the complainant, if you will, at least in that legal sense, to demonstrate that there is an exam that could be designed that's going to be less discriminatory. Demonstrate.

So maybe this is a classic example. We all heard the same testimony from others. But nobody [72] convinced me that we can feel comfortable that, in fact, there's some likelihood that there's going to be an exam designed that's going to be less discriminatory. And that – that does it for me pure and simple.

I – we have a vote of two to two. I'm going to go through the process on the other exam, on the Fire Captain exam. So, as I see it, the exam should not be certified because it's two to two.

Anybody have any comments on this part of it?

Let's go through the next part of the process. Francine, you might as well make a motion as to the other –

MS. CAPLAN: I make a motion that the Captain's exam be certified.

CHAIRPERSON SEGALOFF: I'll second it.

I don't think that we need to do any more other than, I would suggest that the testimony that we all made, to whatever extent we did, on the fire – the other exam is made a part of the testimony for this exam.

I'll second it.

And all in favor? We have two.

And Zelma and Mal, you're opposed.

I don't think there's anything – any [73] other way to – anything else to say. I'm not whining about it. It's been very, very difficult. I am personally saddened by any – vote here. We took on this responsibility and we try our very best to exercise our obligations in a fair and meaningful way. I guess you could – we all sat and we tried very hard to think this all through and came out two to two.

So thank you very much.

MS. TIRADO: I make a motion to adjourn the meeting.

CHAIRPERSON SEGALOFF: Second.

All in favor?

VOICES: Aye.

(Whereupon, the meeting was adjourned at 8:05 P.M.)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK RICCI, ET AL,	:	
Plaintiffs,	:	3 04CV01109 (MRK)
-versus-	:	
JOHN DESTEFANO, ET AL,	:	
Defendants	:	

Deposition of NOELIA MARCANO, taken pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, at the LAW OFFICE OF KAREN LEE TORRE, 51 Elm Street, Suite 307, New Haven, Connecticut, before Julia G. Flynn, a Licensed Certified Shorthand Reporter and a Notary Public in and for the State of Connecticut, on Wednesday, August 31, 2004, at 10:20 a.m.

* * *

[179] Q All right. In your analysis of previous exams in the fire department, did you detect any patterns with respect to the oral scores achieved by African Americans when compared to their actual written scores in the portion of the exam where you cannot have a number on the scale?

A What I recall by way of patterns in comparing the written and oral exams is that candidates tend to

do, in most cases, or score a little bit higher in the oral examination, for various reasons.

Q My question is did you detect any [180] particular pattern that stands out in respect to African Americans as opposes to whites?

A No.

Q You're sure about that?

A I already stated that so far as patterning and comparing the written and the oral, candidates tend to perform or score a little higher on the oral exam than on the written.

* * *

[188] Q With respect to the 1999 lieutenant's exam, you looked at a document earlier, an adverse impact analysis, correct?

A Yes.

Q That's not the first time you have seen that, right?

A Yes.

Q And, well, it's not the first time you have seen it?

A Yes, it's not.

Q And the testing consultant clearly showed that you were below the our-fifths rule in that exam, correct?

A Yes.

Q And yet, you didn't do anything to stop an eligible list from being published, did you?

A No.

Q So would it be fair to say that just because an exam produces score results, when viewed along the lines of race, that reveals a [189] problem with the four-fifths rule, doesn't mean that you scuttle the results, does it?

MR. ROBERTS: Objection.

Q Let me rephrase the question. I don't like the way I phrased it.

A Okay.

Q With respect to the 1999 Adverse Impact Analysis, if anything, isn't it true that it shows that just because the analysis shows that the four-fifths rule is implicated, does not per se mean a necessity to discard the results, correct?

MR. ROBERTS: Objection. You can answer.

A Based on the pass/fail rates and performance of the groups that comprise the candidate pool, no, merely based on test results, another thing we factor in the selection rates.

Q Okay. But let's stick with the four-fifths rule. You don't contend that the 1999 lieutenant's exam

implicated a failure to meet the four-fifths rule, correct?

A It did not meet the four-fifths rule.

Q All right. And you agree that that alone did not justify, and would not justify, [190] discarding the results?

MR. ROBERTS: Objection.

Q Correct?

A That alone.

Q Excuse me?

A That alone would not.

Q However, even though the 1999 results implicated the four-fifths rule, there were no board hearings into that test, were there?

A No, there were not.

Q There was no extensive analysis and investigation into the test, was there?

A No.

* * *

[192] Q And who had a hand in selecting the three so-called professionals who appeared before the board?

A I believe there was input sought from City administration, from our office, from Local 825.

Q Who ultimately chose the people to have been?

A The Civil Service Board.

[193] Q Was any recommendation given to them?

A To the extent that there were individuals suggested by, again, City administration, our department, Local 825, if that can be characterized that way.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK RICCI, MICHAEL BLATCHLEY, GREG BOIVIN, GARY CARBONE, MICHAEL CHRISTOFORO, RYAN DIVITO, STEVEN DURAND, WILLIAM GAMBARDELLA, BRIAN JOOSS, JAMES KOTTAGE, MATTHEW MARCARELLI, THOMAS J. MICHAELS, SEAN PATTON, CHRISTOPHER PARKER, EDWARD RIORDON, KEVIN ROXBEE, TIMOTHY SCANLON, BENJAMIN VARGAS, JOHN VENDETTO AND MARK VENDETTO

Plaintiffs,

V.

JOHN DESTEFANO, KAREN DUBOIS-WALTON, THOMAS UDE, JR., TINA BURGETT, BOISE KIMBER, MALCOLM WEBER, ZELMA TIRADO AND THE CITY OF NEW HAVEN,

Defendants.

CIVIL ACTION NO. 3:04CV01109 (MRK)

March 30, 2005

AMENDED COMPLAINT

(Filed May 26, 2005)

1. This civil action is brought to redress the deprivation by defendants of rights secured to the plaintiffs by the Constitution and laws of the United States and the Constitution and laws of the State of Connecticut. The plaintiffs, all firefighters employed by the City of New Haven, have been unlawfully denied promotions and opportunities for promotions on account of their race and political association. This action further seeks declaratory and injunctive relief and damages against the defendant City of New Haven to redress the deprivation of rights secured to plaintiffs by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, as amended. (Hereinafter "Title VII") Plaintiffs seek a declaratory judgment, an injunction to restrain the City of New Haven from maintaining or continuing in its practices, policies, customs and usages which discriminate against plaintiffs and members of the class that they represent because of their race with respect to promotions in the classified civil service.

2. Injunctive and declaratory relief, damages and other appropriate legal and equitable relief are sought against the defendant City of New Haven pursuant to §706(g) of Title VII, 42 U.S.C. §2000e-5(g).

3. This action is brought pursuant to 42 U.S.C. §1983. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 1333. With respect to the causes

asserted against the defendant City of New Haven under Title VII, the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343(4), 42 U.S.C. §2000e-(5) and 29 U.S.C. §626(c). The plaintiffs further invoke the supplemental jurisdiction of this Court with respect to those causes of action arising under the laws of the State of Connecticut.

4. At all times relevant to this complaint, the defendant John DeStefano was and remains the Mayor of the City of New Haven and was acting under color or pretense of law, to wit: under the Charter, regulations, customs and usages of the City of New Haven. In his said capacity, the defendant DeStefano has chief executive authority over the affairs of the City of New Haven, the employment of municipal personnel and enforcement of the City Charter and rules and regulations of the City's various boards and commissions.

5. At all times relevant to this complaint, the defendant Karen Dubois-Walton was the Chief Administrative Officer of the City of New Haven. In said capacity, the defendant had overall administrative responsibility and authority with respect to the affairs of the City of New Haven, the conduct of all subordinate city officials, the enforcement of the City's charter and rules and regulations of the City's various boards and commissions. At all times relevant to this complaint, the said defendant was acting under color or pretense of law, to wit: under the Charter, regulations, customs and usages of the City of New Haven. The defendant Dubois-Walton is a

political appointee of the Mayor, reports directly to the defendant DeStefano and acts as a political operative for the Mayor by carrying out the Mayor's policies, political agenda and municipal policies.

6. At all times relevant to this action, the defendant Thomas W. Ude, Jr., was and remains the Corporation Counsel for the City of New Haven and in said capacity was acting under color or pretense of law, to wit: under the Charter, regulations, customs and usages of the City of New Haven.

7. The defendant Ude is a political appointee and was appointed to his position by the defendant DeStefano. In his position as Corporation Counsel, defendant Ude has overall responsibility for the management of the City's legal office, the representation of the City in all legal matters and the further responsibility of ensuring, along with the other defendants, that the City and its officials obey the provisions of the City's Charter and the rules and regulations of its various boards and commissions. By provision of the charter, the defendant Ude reports directly to the Mayor, advances the Mayor's position on various legal matters and further acts as a political operative for the Mayor by carrying out the Mayor's policies and political agenda.

8. At all times relevant to this action, the defendant Tina Burgett was the Director of Personnel for the City of New Haven and in said capacity was acting under color or pretense of law, to wit: under the Charter, regulations, customs and usages of the

City of New Haven. The defendant Burgett reports to the defendants DeStefano and DuBois-Walton and carries out the policies and decisions of the Mayor with respect to matters of municipal employment. Defendant Burgett is further responsible for enforcing the provisions of the City Charter and applicable civil service regulations with respect to hiring and promotion of municipal employees in the City's classified civil service.

9. At all times relevant to this complaint, the defendants Malcolm Weber and Zelma Tirado were members of the Civil Service Board of the City of New Haven and in said capacity were acting under color or pretense of law, to wit: under the Charter, regulations, customs and usages of the City of New Haven. The Civil Service Board of the City of New Haven (hereinafter "Board") was established by authority of the City Charter and is comprised of five members, all of whom are appointed by the Mayor of the City of New Haven. The Board is responsible for carrying out and enforcing the provisions of the City Charter respecting the hiring and promotions of individuals in the City's classified service.

10. At all times relevant to this action, the defendant Boise Kimber was a member of the Board of Fire Commissioners of the City of New Haven and in said capacity was acting under color or pretense of law, to wit: under the Charter, regulations, customs and usages of the City of New Haven. The defendant Kimber is a political appointee of the defendant DeStefano and was chosen by the Mayor to serve as

Chairman and later Commissioner of the City's Board of Fire Commissioners. In said capacity, the defendant Kimber has supervisory and administrative control and authority over the affairs of the Fire Department of the City of New Haven, firefighters and other personnel employed by the Department of Fire Services.

11. At all times relevant to this complaint, the defendant City of New Haven (hereinafter "City") was a municipal corporation duly organized and existing under the laws and Constitution of the State of Connecticut. The City was and is the employer of the plaintiffs and liable for the acts and omissions of its officials, representatives, agents and administrators.

12. The acts and omissions of the defendants and each of them as complained of herein were committed under the guise and pretense of municipal authority and pursuant to official practices, customs and policies of the City which are designed and operate to discriminate against municipal employees on the basis of race and political affiliation.

13. The plaintiffs are employees of the City and members of the City's classified civil service. All of the plaintiffs are employed as firefighters in the Department of Fire Service. The plaintiff Benjamin Vargas is Hispanic. All of the other plaintiffs are white. The majority of the plaintiffs live outside the boundaries of the City, are not members of the defendant DeStefano's political constituency and are not a source of political support for him.

14. The City of New Haven is governed by a charter the provisions of which are established and approved by the voters of the City of New Haven in an exercise of democratic will. The Charter has the force of law and all elected and appointed officials and agents of the City are mandated to respect and carry out its provisions. In particular, the Charter charges the Mayor with the duty of causing all laws and ordinances to be executed and enforced. The Mayor is further responsible for the good order and efficient government of the city.

15. The Charter provides for the establishment of a classified civil service and all positions in city government within the classified service are subject to the various charter provisions and Civil Service Board rules respecting the hiring and promotion of individuals in the classified service. The position of firefighter falls within the classified service.

16. To avoid to the greatest extent possible the ills of the old spoils system, to wit: invidious discrimination, nepotism, cronyism, political horse-trading, graft and bribery, the Charter provides for a strictly merit-based system for the promotion of municipal employees in the classified service.

17. Article XXX, §167 of the Charter provides that all promotions in the classified service shall be made according to merit and fitness to be ascertained so far as practicable by competitive examination.

18. Article XXX, §172 of the Charter expressly mandates that no person in the classified service

shall be appointed, promoted or in any way favored or discriminated against because of race, sex, age, national origin, or political or religious opinion or affiliation. The said section further provides that no person shall willfully or corruptly make any false statement, certificate, mark, rating or report in regard to any test, certification, promotion, reduction, removal or appointment held or made under the provisions of the charter or in any manner commit or attempt to commit any fraud preventing the impartial execution of the rules and regulations respecting the merit-based examination process.

19. The Charter further expressly provides that no person shall either directly or indirectly pay, render or give any money, service or any valuable thing to any person, for or on account of or in connection with any test, appointment, or promotion. A violation of this provision constitutes a criminal offense punishable by fine and imprisonment.

20. Article XXX, §166 of the Charter charges the Personnel Director of the City with the duties of preparing, conducting and scoring examinations of qualified applicants for all positions in the classified service and certifying the results of such examinations to the members of the Civil Service Board. The Personnel Director is further required to determine the eligibility of applicants for all positions in accordance with the Charter and rules established by the Civil Service Board and to maintain records of all applicants, their qualifications and scores.

21. Consistent with establishment of a merit-based system of hiring and promotion, Article XXX, §160 of the Charter, as well as the rules and regulations of the Board, provide that no promotion within the classified service shall be made except from among those applicants with the three highest scores of those who shall have passed a competitive examination with a score of at least seventy percentum and are upon the eligible list established by the Director of Personnel and the Board. This requirement is commonly known and referred to as the "Rule of Three".

22. For some ten years, the City of New Haven, acting through its officials, among them the defendants herein, engaged in a pattern of repeated violations of the Rule of Three for the improper and unlawful purpose of engaging in race-based discrimination and political favoritism in the appointment and promotion of individuals in the classified service. As a result of its repeated and persistent lawbreaking, the City and various of its officials were named defendants in several civil actions brought in the Superior Court for the Judicial District of New Haven by municipal employees who were victims of the City's violations of its Charter.

23. In each case where the City's practice of violating the Rule of Three was challenged, the plaintiffs in all such civil actions prevailed in their efforts to seek temporary and permanent injunctive relief against such illegal practices. The defendants herein, intent on persisting in the illegalities

complained of in this action, proceeded boldly and brazenly to ignore the opinions and orders of the judges of the Superior Court for the Judicial District of New Haven. In consequence certain plaintiffs sought and gained a permanent injunction and final judgment against the City enjoining the City from further violations of the Rule of Three.

24. For the purpose of filling vacancies in the promotional ranks of its fire department, the City, in accordance with the Charter, administered competitive examinations for promotions to the ranks of lieutenant and captain.

25. The plaintiffs Gary Carbone, William Gambardella, Brian Jooss, James Kottage, Matthew W. Marcarelli, Thomas J. Michaels, Edward Reardon, Kenneth Roxbee, Timothy Scanlon, Benjamin Vargas and John Vendetto competed in the examination process for promotion to the rank of captain. The plaintiffs Frank Ricci, Michael Blatchley, Greg Boivin, Michael Christoforo, Ryan DeVito, Steven Durand, Sean Patton, Christopher Parker and Mark Vendetto competed in the examination process for promotion to the rank of lieutenant.

26. The plaintiffs expended money and time in preparation for the examinations. They gave up much of their leisure time and time with family and friends in order to study for the examinations.

27. The competitive examination consisted of two components, a written examination and an oral

examination. With respect to the position of lieutenant, a written examination was administered on or about November 22, 2003 and an oral examination was administered on or about December 13, 2003 to all those eligible to compete. With respect to the position of captain, a competitive written examination was administered on or about November 21, 2003 with the oral examination administered on or about December 14, 2003 to all those eligible to compete. With respect to all of these examinations, the City contracted with and engaged the services of a professional corporation which employs personnel possessed of expertise in the field of formulation and administration of competitive civil service employment examinations. The City expended the approximate sum of $100,000.00 in payment of professional fees for such purpose and the examinations were prepared upon input of city officials and fire department personnel. The form and content of the examinations were approved by the defendants, who determined that the examinations were appropriately related to the knowledge, skills and abilities necessary to competent performance of the duties of both positions.

28. Consistent with the Charter's mandate that promotions be based upon merit and without regard to race or other improper factors, applicants participating in the examination process were assigned an identification number and no other characteristics of an examinee, including his/her race, age, gender or ethnicity, were made available or known to the test administrators. On or about January 22, 2004, the

scores achieved by all examinees were reported to the defendants by reference to the identification number of each examinee.

29. Upon information and belief the defendant Burgett, together with the City's Chief Examiner, Noelia Marcano, upon receipt of the scores from the test administrators, proceeded to peruse through personnel files and other city documents for the purposes of ascertaining the race and ethnicity of each applicant and labeling each applicant in accordance with what they believed or suspected to be his/her race and ethnicity. The defendant thereafter compiled another list of examinees identified only by assigned number which indicated each individual's score and his/her race as perceived by defendants.

30. The aforesaid list was published and circulated among city officials. Upon review of the list, with its labeling of candidates on the basis of race, the defendants alleged that white firefighters were the top scorers in both competitive examinations.

31. The defendants herein, having been enjoined by a judge of the Connecticut Superior Court from further violations of the City Charter and the Rule of Three, were obligated by court order to promote employees in strict accordance with the Charter. With respect to the promotional examinations for the ranks of captain and lieutenant, compliance with the law and the Charter would have required the promotion of the plaintiffs and/or consideration of them for

promotion under the Rule of Three without regard to race, ethnicity or political opinion or affiliation.

32. Compliance with the Charter, and thus promotion of those deemed most fit based on merit, would have resulted in white and Hispanic firefighters being promoted first given the number of then-existing vacancies in the promotional ranks. The defendants thus embarked on a course of conduct designed to avoid and/or evade compliance with their legal obligations. The defendants and each of them collaborated and conspired with one another to cause the City to discard the examination results and fail and refuse to establish an eligible list for promotion to the ranks of captain and lieutenant.

33. The defendant DeStefano was subjected to pressure and lobbying by leaders of New Haven's African-American community including, but not limited to, defendant Boise Kimber and certain minority members of the City's Board of Aldermen,

34. The defendant Kimber is an African-American and a minister who leads a large congregation in the City of New Haven comprised largely of African-Americans. The defendant Kimber has long been active in Democratic party politics and is a political ally and operative for the defendant DeStefano. The defendant DeStefano values his relationship with the defendant Kimber who has used his influence as a minister and civic leader to swing support and blocs of votes in favor of defendant DeStefano in his successful mayoral electoral

campaigns. The defendant Kimber, angered that white firefighters would be promoted, proclaimed that the Civil Service Board would certify the test results "over [his] dead body" and proceeded to pressure the Mayor and lobby members of the Civil Service Board with the aim of provoking the Board to violate the Charter and refuse to proceed with promotions based on merit.

35. The defendant DeStefano not only has an interest in re-election to the office of Mayor but has disclosed publically his ambition to be elected Governor of the State of Connecticut. The defendant DeStefano feared that the City's compliance with the Charter and the promotion of firefighters based on merit and without regard to race and political association would engender the anger and retribution of leaders of the African-American community in New Haven and thus jeopardize his political standing and ambition. Defendant DeStefano feared that promotions in the fire department in accordance with the law and free from race-based discrimination and political influence-peddling would result in a withdrawal of political support by the defendant Kimber and other leaders of the African-American community in New Haven.

36. Well aware that his intended course of action was unlawful and wishing to appear neutral and uninvolved, the defendant DeStefano delegated to the other individual defendants, in particular defendants Dubois-Walton and Ude, the task of causing the City to engage in the acts and omissions

complained of. Defendant DeStefano knew that his authority and influence, exerted surreptitiously and through his political appointees and subordinates, would achieve the desired result.

37. As part of their plan to evade compliance with the Charter and violate the rights of the plaintiffs by denying them justly earned promotions, the defendants first attempted to concoct a pretext under which they could deny promotions to the plaintiffs by discarding the examination results for a seemingly legitimate reason. Toward this end, defendants attempted unsuccessfully to solicit evidence of irregularities and/or cheating during the examination process. No evidence whatever existed, however, to support such a claim and the defendants thereafter sought to concoct other seemingly valid reasons to discard the test results, among them a suggestion that one or more minority firefighters who competed in the examinations was deprived of access to necessary information and/or study materials pertinent to the test by the act or failure of a city official or agent. When the defendants understood that such claim was likewise invalid, defendants resorted to behind-the-scenes lobbying and exertion of political pressure on the members of the Civil Service Board for the purpose of influencing the Board to engage in the unlawful acts complained of.

38. The defendant Ude, at the direction and with the approval of Defendant DeStefano, proceeded to collaborate with defendants Burgett and Dubois-Walton to influence and provoke the Civil Service

Board to violate the Charter, the state and federal constitutions, and state and federal law prohibiting race discrimination in employment and adverse employment actions on account of political expression and affiliation.

39. The defendant Ude made public remarks to the Board and the broadcast and print media which were designed to intimidate and influence the politically appointed members of the Civil Service Board, comments that were insulting and inflammatory and designed to make Board members afraid to discharge their legal obligation under fear of being labeled by City officials and others as "bigots".

40. The defendants Ude, Dubois-Walton and Burgett, acting at the direction of the Mayor and pursuant to the Mayor's policy, further proceeded to communicate and conspire to devise a strategy to produce the results desired by the Mayor which was a refusal by the Board to carry out its duty to establish an eligible list and permit promotions to be made. Through e-mail communications and surreptitious meetings, the defendants Ude, Dubois-Walton and Burgett conspired and acted to cause the City to refuse to establish an eligible list and thus prevent the plaintiffs from receiving promotions to which they were lawfully entitled. Defendants acted covertly in a manner designed to disguise the fact that the defendant DeStefano had dictated such course of action with the unlawful aims of discriminating against employees on the basis of race and rewarding with promotions those firefighters who are constituents of

African-American leaders, friends or relatives of the Mayor's political supporters and contributors, and friends or relatives of certain members of the City's Board of Aldermen.

41. Defendants thereafter engaged the services of several professionals and/or academics for the alleged purpose of reviewing the examinations and offering an opinion as to their fairness. The defendant Burgett attempted improperly to influence these professionals in advance of their formulation of an opinion by providing them with selected media reports and publications which she hoped would persuade the professionals to offer an opinion upon which the City may justify a refusal to certify the examination results. To the defendants' disappointment, however, none of these individuals offered an opinion that the examinations were not pertinent to the duties and responsibilities of the promotional positions or were otherwise unfair. The defendants also arranged for the personal appearance before the Civil Service Board of a representative of the firm which devised and administered the examinations who, in an extensive presentation to the Board, assured board members that the subject matter and content of the examinations were appropriate and the testing process fair to all who competed.

42. Despite all of the above facts, on or about March 18, 2004, the defendants, acting through the members of the Civil Service Board, opted to discard the examination results and refuse to establish an

eligible list. As a result, none of the plaintiffs will be promoted or considered for promotion.

43. On diverse dates from January 22, 2004 until the date of the commencement of this action, the plaintiffs demanded disclosure of their individual scores for the purpose of determining their relative positions and ranks on the eligible list required by the Charter and the rules of the Board. Believing that their civil and constitutional rights were violated by the defendants, each plaintiff further wished to determine his standing to commence an administrative proceeding and/or civil action to redress his injuries.

44. The defendants were aware that those whose rights were violated and who suffered injury on account of defendants' unlawful acts would possess and may pursue causes of action as to which applicable statutes of limitation would require the plaintiffs to act promptly or suffer foreclosure of their rights.

45. The defendants aimed to thwart any scrutiny of their conduct in relation to the examination scores. Defendants further aimed to keep the plaintiffs in a state of uncertainty and confusion regarding their performance in the examinations and the extent to which their rights were violated by defendants. With ill motive, defendants conspired unlawfully to deny plaintiffs access to information regarding their scores with the foreknowledge that said conduct would impede plaintiffs' ability to ascertain their

rights and commence an administrative or civil proceeding to vindicate such rights.

46. Although the Charter, Civil Service Board rules and City policies allowed for the right of the plaintiffs to disclosure of their scores and despite the fact that the city and its officials had previously been admonished by state authorities for unlawfully refusing employees access to their examination scores, the defendants maliciously deprived and continue to deprive the plaintiffs of this information for the purpose of causing the plaintiffs to suffer distress and for the further unlawful purpose of frustrating and impeding plaintiffs' access to the agencies and courts of the State of Connecticut for redress of their injuries.

47. Each of the plaintiffs had an absolute right protected by the First Amendment to the United States Constitution and by article first, section 4 of the Constitution of the State of Connecticut to choose not to be a political supporter of the defendant DeStefano, to refrain from activities on behalf of the Democratic Party in New Haven and to refrain from association with those whose manage and support the defendant DeStefano' s campaigns for political office.

48. Each of the plaintiffs have the right under the Charter of the City of New Haven to promotion, opportunities and consideration for promotion on the basis of merit and free from favoritism and discrimination on the basis of their race, ethnicity or political association or affiliation.

49. By the acts and omissions of the defendants as complained of herein, the plaintiffs were deprived of their right to equal protection of the laws and equal privileges as guaranteed by the Fourteenth Amendment to the United States Constitution.

50. By the acts and omissions of the defendants as aforedescribed, the plaintiffs and each of them were deprived of their property interests without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

51. By the acts and omissions aforedescribed, the defendants violated the plaintiffs' rights to freedom of speech as guaranteed by the First Amendment to the United States Constitution.

52. By the acts and omissions aforedescribed, the defendants violated the plaintiffs' rights to freedom of association as guaranteed by the First Amendment to the United States Constitution.

53. By the acts and omissions aforedescribed, the defendants violated the plaintiffs' rights to freedom of expression as guaranteed by article first, section 4 of the Constitution of the State of Connecticut.

54. Each of the acts and omissions of the defendants as aforedescribed constituted intentional, extreme and outrageous conduct which defendants knew was likely to cause the plaintiffs to suffer severe emotional distress. As a direct and proximate

result of defendants' tortious conduct, the plaintiffs and each of them suffered severe emotional distress.

55. At all times relevant to this complaint, the defendants and each of them acted willfully and intentionally and/or with reckless disregard of whether their conduct violated the plaintiffs' civil and constitutional rights.

56. In the manner aforedescribed, the defendants and each of them violated the provisions of 42 U.S.C. Section 1983 to the injury of the plaintiffs.

57. The defendants conspired with one another to violate the civil and constitutional rights of the plaintiffs and in so doing violated the provisions of 42 U.S.C. Sections 1983 and 1985 to the injury of the plaintiffs.

58. At all times relevant to this complaint, each defendant had the duty to intervene and prevent another defendant from engaging in the unlawful acts and omissions complained of herein. Each defendant failed to discharge this duty to the injury of the plaintiffs.

59. The aforedescribed acts and omissions of the defendants were committed pursuant to and as a part of an official policy, custom and practice established by the City of New Haven with the purpose and effect of depriving the plaintiffs and others similarly situated the aforesaid civil and constitutional rights on the unlawful bases of race, ethnicity, expression, association and political affiliation. As a direct and

proximate result of the official policy and practices of the City of New Haven as complained of herein, the plaintiffs and each of them have suffered injury.

60. The defendant City of New Haven is an employer and covered entity within the meaning of 42 U.S.C. §2000e(b). At all times, the City was prohibited by Title VII from failing or refusing to promote or otherwise discriminating against any of the plaintiffs with respect to his compensation, terms, conditions or privileges of employment because of such individual's race or national origin.

61. The plaintiffs herein have complied with all administrative prerequisites to suit under Title VII by the timely filing of administrative complaints with the Connecticut Commission on Human Rights and Opportunities ("CHRO") and the Equal Employment Opportunities Commission ("EEOC"), by receipt of a Right to Sue letter from the EEOC through the United States Department of Justice and the bringing of this cause of action in the United States District Court within ninety (90) days of their receipt thereof.

62. By the aforesaid acts and omissions complained of, the City of New Haven, in depriving the plaintiffs of promotions and opportunities for promotions on account of their race, violated the plaintiffs' rights to be free from discrimination in employment on account of their race and/or national origin in violation of 42 U.S.C. §2000e-2(a)(1), (2), and 3(b). In further violation of said provisions of Title VII, the City of New Haven has also engaged in a practice by

which it knowingly permits the skewing of assessments and scoring on the oral component of the examination process in favor of African-American candidates and in disfavor of white candidates. The conduct of the City in this respect has resulted in an overall depression of examination scores for white candidates undergoing oral examination in contradiction to their actual examination performance, which thus serves to dilute the white candidates' chances for promotion.

63. As a direct and proximate result of the acts and omissions of the defendants as afore-described the plaintiffs suffered the following injuries, including, but not limited to:

a. Denial of promotion;

b. Denial of fair consideration for promotion;

c. Denial of opportunities for promotion;

d. Loss of income, pension accruals and other benefits attendant to promotion;

e. Loss of money and time expended in connection with preparation for and participation in the examinations;

f. Inconvenience, annoyance, burden and time away from family and leisure activities associated with unsuccessful efforts to secure defendants' compliance with the law and their right to disclosure of their examination scores;

g. Damage to their careers and standing in their profession;

h. Impeded and foreclosed opportunities for further promotion to higher ranks of the New Haven Fire Department;

i. Severe emotional distress, anxiety and upset;

j. Other intangible injuries associated with the violation of their civil and constitutional rights.

Wherefore, the plaintiffs demand judgment against the defendants and each of them and further relief as follows:

a. Compensatory damages in an amount which a jury shall determine to be just and reasonable;

b. Punitive damages in an amount which a jury shall determine to be just and reasonable;

c. Reasonable counsel fees and the costs of this action;

d. A declaratory judgment declaring the challenged practices unlawful and a permanent injunction enjoining the defendants from persisting in the challenged practices;

e. Pre-judgment and post-judgment interest as allowed by law; and

f. Such further relief as law and equity may afford.

THE PLAINTIFFS,

BY: /s/ Karen Lee Torre

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Their Attorney

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK RICCI, MICHAEL BLATCHLEY, GREG BOIVIN, GARY CARBONE, MICHAEL CHRISTOFORO, RYAN DIVITO, STEVEN DURAND, WILLIAM GAMBARDELLA, BRIAN JOOSS, JAMES KOTTAGE, MATTHEW MARCARELLI, THOMAS J. MICHAELS, SEAN PATTON, CHRISTOPHER PARKER, EDWARD RIORDON, KEVIN ROXBEE, TIMOTHY SCANLON, BENJAMIN VARGAS, JOHN VENDETTO AND MARK VENDETTO

Plaintiffs,

V.

JOHN DESTEFANO, KAREN DUBOIS-WALTON, THOMAS UDE, JR., TINA BURGETT, BOISE KIMBER, MALCOLM WEBER, ZELMA TIRADO AND THE CITY OF NEW HAVEN,

Defendants.

CIVIL ACTION NO. 3:04CV01109 (MRK)

March 30, 2005

DEMAND FOR JURY TRIAL

The plaintiffs hereby demand a trial by jury on all issues.

THE PLAINTIFFS,

BY: /s/ Karen Lee Torre

Karen Lee Torre (ct#01707
Law Offices of Karen Lee Torre
51 Elm Street, Suite 307
New Haven, Connecticut 06510
Tel. (203) 865-5541
Fax: (203) 865-4844

Their Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK RICCI, ET AL. plaintiffs	:	
v.	:	NO: 3:04-CV-1109 (MRK)
JOHN DESTEFANO, JR., ET AL. defendants	:	AUGUST 29, 2005

ANSWER AND AFFIRMATIVE DEFENSES

1. Admit that this is a civil action which seeks declaratory and injunctive relief and damages. Admit that the action alleges a deprivation by defendants of certain rights but deny that any such deprivation occurred. Admit that the plaintiffs are all firefighters employed by the City of New Haven but deny all other allegations of paragraph 1.

2. Admit.

3. Admit.

4. Admit.

5. As to that portion of paragraph 5 which states, "At all times relevant to this complaint, the defendant Karen Dubois-Walton was the Chief Administrative Officer of the City of New Haven" and "The defendant Dubois-Walton is a political appointee

of the Mayor, reports directly to the defendant DeStefano . . . by carrying out the Mayor's policies, political agenda and municipal policies." is admitted. As to the rest and remaining portion of paragraph 5, it is denied. It is further admitted that Karen Dubois-Walton had supervisory responsibility over six city departments.

6. Admit.

7. Admit the first sentence. Admit that in his position as Corporation Counsel, defendant Ude has general overall responsibility for management of the City's legal office and has such further responsibilities as are set forth and described in Section 18 of the City Charter and otherwise deny the remaining allegations to the extent they are inconsistent with those duties.

8. Admit the first sentence. Admit that defendant Burgett as Personnel Director has the powers and duties as set forth and described in Section 166 of the City Charter and otherwise deny the remaining allegations to the extent they are inconsistent with those duties.

9. Admit.

10. Admit the first sentence, admit that defendant DeStefano appointed defendant Kimber to the Board of Fire Commissioners and that defendant Kimber served as that Board's Chair and deny the remaining allegations of the paragraph.

11. Admit the first sentence and admit that the City was and is the employer of the plaintiffs, and deny the remaining allegations of the paragraph as alleged.

12. Deny.

13. Admit the first sentence. Admit, upon information and belief, the plaintiffs' self described ethnicity and that the majority of plaintiffs live outside the boundaries of the City. The remaining allegations are vague in that the terms "political constituency" and "source of political support" are not clear and thus defendants neither admit nor deny the remaining allegations but leave the plaintiffs to their proof.

14. Admit, except note that the Charter is not the only law that governs the City of New Haven and that the Charter states which officials are required to carry out its provisions.

15. Admit and refer to the actual charter for its scope.

16. Admit that the charter provides for a merit based system for promotion of municipal employees in the classified service and refer to the actual Charter for the scope and limits of such system.

17. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

18. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

19. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

20. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

21. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

22. Deny.

23. Admit that there were civil actions challenging the City's interpretation of the Rule of Three but deny the remaining allegations of the paragraph.

24. Admit.

25. Admit.

26. The defendants have insufficient direct knowledge to either admit or deny the allegations of this paragraph and thus leave the plaintiffs to their proof.

27. Admit the first four sentences. Deny the fifth and sixth sentences.

28. Deny.

29. Deny.

30. Deny as stated, but admit that two lists with preliminary scores from the tests that identified race and ethnicity for purposes of evaluating adverse impact circulated among some City officials, and admit that those preliminary lists showed that the top scorers in both examinations were white.

31. Deny.

32. Deny.

33. Deny.

34. Admit the first sentence. Admit the second sentence except deny the term "operative". Admit the third sentence except deny that defendant Kimber can control how anyone other than he himself votes. Deny the fourth sentence.

35. Admit the first sentence. Deny the second sentence. Deny the third sentence.

36. Deny.

37. Deny.

38. Deny.

39. Deny.

40. Deny.

41. Admit that several experts were solicited for their opinions concerning certain aspects of the examinations but deny the remaining allegations of the paragraph.

42. Admit that on or about March 18, 2004 a motion before the Civil Service Board to certify promotional lists to be generated through the tests did not pass. Deny the remaining allegations of the paragraph.

43. With regard to the first sentence, admit that some of the plaintiffs sought disclosure of their individual scores but deny the remaining allegations. With regard to the second sentence defendants can neither admit nor deny the state of mind of the plaintiffs and leave them to their proof.

44. Deny.

45. Deny.

46. Deny.

47. Admit.

48. Deny as stated. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

49. Deny.

50. Deny.

51. Deny.

52. Deny.

53. Deny.

54. Deny.

55. Deny.

56. Deny.

57. Deny

58. Deny.

59. Deny.

60. Admit.

61. The defendants have insufficient direct knowledge to either admit or deny the allegations of this paragraph and thus leave the plaintiffs to their proof.

62. Deny.

63. Deny.

FIRST AFFIRMATIVE DEFENSE

The actions and inactions of the defendants were mandated by federal law and thus any state law claims of the plaintiffs are preempted.

SECOND AFFIRMATIVE DEFENSE

The matter is not yet ripe.

THIRD AFFIRMATIVE DEFENSE

The individual defendants are absolutely immune from suit for the actions alleged in the complaint.

FOURTH AFFIRMATIVE DEFENSE

The individual defendants are qualifiedly immune from suit for the actions and inactions alleged in the complaint.

THE DEFENDANTS
JOHN DESTEFANO, ET AL.

By /s/ [Illegible]

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK RICCI, ET AL,	:	
Plaintiffs,	:	3 04CV01109 (MRK)
-versus-	:	
JOHN DESTEFANO, ET AL,	:	
Defendants	:	

Deposition of KAREN DUBOIS-WALTON, taken pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, at the New Haven City Hall, 165 Church Street, New Haven, Connecticut, before Julia G. Flynn, a Licensed Certified Shorthand Reporter and a Notary Public in and for the State of Connecticut, on September 20, 2005 at 10:20 a.m.

* * *

[134] Q And would you agree with me that when it comes to the protection and saving of life, the protection of the public and property, that it is not in the City's interest to have anyone in the job of fire-fighter, or a higher ranked promotional position, who is either marginal or incompetent?

A I would agree.

[135] Q And do you see any reason why this City should compromise standards for the sake of diversity?

A No.

Q Would you agree that – or do you have any understanding that a lieutenant, even though it's the first level promotion, would at some – on many occasions, be in the position of command of a fire scene?

A Yes, my understanding is that that may occur.

Q And it certainly would occur at the higher level of captain, correct?

A Yes.

Q Is it your position that for the sake of diversity, the City of New Haven should install in either position an African American who may be in fact less competent than a white candidate, for the sake of achieving racial diversity?

A No.

* * *

[138] Q Now, in your statement to the BOA, Board of Aldermen, and in your letter statement to the CSB, did you in fact make a representation that the disparate impact in terms of scoring impact on minorities was much more severe in the 2003 [139] examinations than ever before?

A I understood the combination of the score differences, the number of vacancies and the Rule of Three that put us in a situation unlike one we had experienced before, yes.

Q Well, when – my question was did you make that statement to the Board of Aldermen?

A Can I see the statement?

Q Yes.

A I believe I said the results differ markedly –

Q What was your –

A – from typical –

Q I'm sorry.

A – from typical results.

Q What was your factual basis for making that remark?

A Comparison of previous public safety exams.

Q And you made the comparisons, or were you relying on what Ms. Marcano or somebody else told you?

A Information from Human Resources.

Q Ms. Burgett?

[140] A Well, from – I'm not sure who produced the information. It was somebody in Human Resources, either Ms. Marcano or Tina. I would guess that Ms. Marcano did the actual comparisons.

Q Okay. And similarly, before the CSB, you made a like remark, as did Ms. Burgett and Mr. Ude, that is, –

A That's correct.

Q – that the adverse impact on minorities was substantially more severe than the 2000 exams, as compared to previous exams, correct?

A In front of the Civil Service, I believe what I said was that the combination that wasn't just the – the scores, but the fact that there were few vacancies, and the Rule of Three all combined, led us to a situation where we had a different outcome than other times.

Q So would I be correct therefore in understanding that the representation with respect to the severity of the adverse impact was a function of both the score results, and the number of vacancies which existed in both ranked positions?

A And the Rule of Three, yes.

[141] Q And the Rule of Three. Did either Mr. Ude, Ms. Burgett, or Ms. Marcano, to your knowledge, ever tell you or the mayor, directly or indirectly, through you, that previous promotional exams in the fire departments also resulted in similar scoring disparities between whites and blacks?

A I believe that I was told that we – that there had been times in the past where the pass rates were different, were markedly different. But that we had never been in a situation like we were in at that moment, where we were going to be in a position of being able to promote on one of the exams, solely,

solely Caucasians and on the other exam, potentially, I believe it was one Latino at the time.

Q What was your knowledge – did you understand that there was a previous 1999 lieutenant's examination?

A Yes, I understood that.

Q And what information did you have with respect to the relative passing rates of blacks and whites on that exam?

A Without having my forms in front of me, [142] I remember on the '96 and '99, that there were differences, and I don't remember specifically what the numbers were on either of them.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK RICCI, ET AL. plaintiffs	:	
v.	:	NO: 3:04-CV-1109 (MRK)
JOHN DESTEFANO, JR, ET AL. defendants	:	

AFFIDAVIT

STATE OF CONNECTICUT)
) SS: New Haven
COUNTY OF NEW HAVEN)

I, Noelia Marcano, being duly sworn do depose and say:

1. I am over the age of 18 years and understand the obligations of an oath.

2. I have personal knowledge of the facts contained in this affidavit.

3. I am the Chief Examiner for the City of New Haven; I am also the Secretary to the New Haven Civil Service Board.

4. The document attached hereto is a true and accurate copy of the written summary that I helped

prepare which compares results from previous examinations with the preliminary results from the subject examinations. Said summary was provided to the Civil Service Board at its January 22, 2005 meeting.

/s/ Neolia Marcano
Noelia Marcano

Subscribed and sworn to before me this 27th day October, 2005.

/s/ Pamela M. Popolizio
~~Commissioner of the Superior Court~~
Notary Public
My Commission Expires:
Pamela J. Popolizio,
Notary Public
State of Connecticut
My Commission Expires
6/30/2008

Summary Information

I. Currently, there are 336 members of Fire Suppression Services.

248 Firefighters
51 Lieutenants
21 Captains
7 Battalion Chiefs
4 Deputy Chiefs

Firefighter	**Total**	**%**
White	132	53%
African American	76	30%
Hispanic	40	16%

Lieutenant	**Total**	**%**
White	32	63%
African American	11	22%
Hispanic	8	16%

Captain	**Total**	**%**
White	18	86%
African American	1	4%
Hispanic	2	9%

Battalion Chief	**Total**	**%**
White	5	71%
African American	2	29%
Hispanic	0	0%

Deputy Chief	Total	%
White	3	75%
African American	0	0%
Hispanic	1	25%

II. Fire Lieutenant Examination by Year

# of individuals who passed by year	White	African American	Hispanic
1996	50	13	6
1999	25	8	9
2003	26	6	3

III. Fire Lieutenant Ranks by Race

	White	African American	Hispanic
1996	Rank 1	Rank 3	Rank 4
1999	Rank 1	Rank 5	Rank 1
2003	Rank 1	Rank 13	Rank 26

Captain Examination by Year

# of individuals who passed by year	White	African American	Hispanic
1998	35	7	3
2003	16	3	3

IV. Captain Ranks by Race

	White	African American	Hispanic
19998	Rank 1	Rank 5	Rank 4
2003	Rank 1	Rank 15	Rank 6

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK RICCI, ET AL. plaintiffs	:	
v.	:	NO: 3:04-CV-1109 (MRK)
JOHN DESTEFANO, JR, ET AL. defendants	:	

AFFIDAVIT

STATE OF CONNECTICUT)
) SS: New Haven
COUNTY OF NEW HAVEN)

I, Noelia Marcano, being duly sworn do depose and say:

1. I am over the age of 18 years and understand the obligations of an oath.

2. I have personal knowledge of the facts contained in this affidavit.

3. I am the Chief Examiner for the City of New Haven; I am also the Secretary to the New Haven Civil Service Board.

4. I hold a Master of Science degree in Counseling-Human Resources Development, I am certified by the Society of Human Resource Management as

Senior Personnel Human Resources. I possess over fifteen years of experience in the career field of Human Resource Administration and have dealt directly with employment testing issues for the last ten years of my career.

5. I am familiar with the Uniform Guidelines on Employee Selection Procedures, specifically Section 4D: Adverse Impact and the "four-fifths rule." The guidelines are attached to the Defendants' Local Rule 56(a)1 Statement.

6. In the normal course of events with promotional tests of the type at issue in this litigation, as Chief Examiner I request initial information from the test consultant with respect to overall pass rates as well as results of the adverse impact analysis conducted on tested candidates. My inquiry to Industrial/Organizational Solutions with respect to this initial information on overall pass rates and the adverse impact analysis led to the delivery of the preliminary scoring data of candidates tested for Fire Lieutenant and Fire Captain.

7. I received and reviewed the preliminary scoring data from Industrial/Organizational Solutions for the promotional examinations for Fire Lieutenant and Fire Captain in late December 2003, and was concerned that there would be adverse impact in the selection rates of candidates for promotion.

8. Thereafter, I discussed this matter with my immediate supervisor, the Director of Human Resources.

9. I participated in several meetings with my director, the corporation counsel and other city officials at which this issue was reviewed and its ramifications discussed.

10. In the course of these discussions, it was decided that it was not appropriate to submit draft eligible lists to the Civil Service Board to be certified. It was concluded that the best course of action would be to submit all relevant information to the Civil Service Board and to let the Board decide on how to proceed with this matter.

11. The Civil Service Board decided to conduct public hearings that involved the issues concerning this suit. Evidence at the Civil Service hearings reinforced my concerns about the tests in regard to adverse impact.

12. There were five Civil Service Board proceedings concerning these issues held on various dates in the beginning of 2004; namely, a Civil Service Board meeting on January 22nd, and four public hearings conducted on February 5th, February 11th, March 11th, and March 18th.

13. All Civil Service Board meetings and public hearings at which these issues were discussed were publicly noticed. I also faxed a copy of each notice document directly to the offices of the New Haven Firefighters Local 825 ("Union"). Letters were also mailed to each candidate who tested in the subject exams informing them of the initial January meeting.

14. My initial concerns were based on the fact that under Section 4D: Adverse Impact and the "four-fifths rule" of the Uniform Guidelines on Employee Selection Procedures, the tests at issue in this litigation revealed considerable adverse impact.

15. Section 160 of the New Haven Charter governs New Haven's merit selection process, and it provides that only those applicants with the three highest scores on a promotional examination can be appointed; this provision is commonly referred to as the "Rule of Three". Section 160 also provides that only those applicants with a score of at least seventy percentum can be appointed; as such, 70% or higher is considered a passing score.

16. At the time the subject tests were administered there were seven vacancies for the captain position. Based on the Rule of Three, had the results of the subject test been certified, the applicants with the top nine scores on the captain examination would have been eligible for consideration for appointment to that position.

17. Based on the Rule of Three, and the number of promotional vacancies for which the results of said tests would determine selection, two Hispanic candidates could have been considered for appointment to captain and no African-American candidate could have been considered for appointment to captain.

18. At the time the subject tests were administered there was one vacancy for the position of lieutenant. However, if the subject test results were

certified, seven lieutenants would have been promoted to captain and that would have resulted in a total of eight vacancies at the lieutenant position. Based on the Rule of Three, had the subject results been certified, the applicants with the top ten scores on the lieutenant examination would have been eligible for consideration for appointment to that position.

19. Based on the Rule of Three, and the number of promotional vacancies for which the results of said tests would determine selection, no minorities would have been eligible for consideration for appointment to lieutenant.

20. I assisted with the preparation of a written summary comparing results from previous examinations with the preliminary results from these examinations, which summary was provided to the Civil Service Board at its January 22, 2005 meeting. At the January 22nd meeting, the Civil Service Board was also provided with a four page summary of relevant laws and regulations prepared by the City's corporation counsel and the preliminary scoring data for the subject examinations.

21. I believe that due to the adverse impact in the preliminary examination results, application of the Rule of Three would have resulted in disparate treatment of the minority candidates who competed in the subject tests.

22. The following is based on Section 160 of the New Haven Charter, which provides that 70% is the

passing grade for the subject examinations, and the Preliminary Scoring Data for 2003 Captain Exam:

a. Forty-one people took the promotional examination for the Captain positions.

b. Twenty-five Caucasian candidates took the promotional examination for the Captain positions.

c. Eight African American candidates took the promotional examination for the Captain positions.

d. Eight Hispanic candidates took the promotional examination for the Captain positions.

e. There were two portions of the promotional examination for the Captain positions, namely, a written portion and an oral portion.

f. Eighteen out of twenty-five Caucasian candidates passed the promotional examination for the Captain positions based on their composite scores.

g. Three out of eight African American candidates passed the promotional examination for the Captain positions based on their composite score.

h. Three out of eight Hispanic candidates passed the promotional examination for the Captain positions based on their composite score.

23. The following is based on Section 160 of the New Haven Charter, which provides that 70% is the

passing grade for the subject examinations, and the Preliminary Scoring Data for 2003 Lieutenant Exam:

a. Seventy-seven people took the promotional examination for the Lieutenant position.

b. Forty-three Caucasian candidates took the promotional examination for the Lieutenant position.

c. Nineteen African American candidates took the promotional examination for the Lieutenant position.

d. Fifteen Hispanic candidates took the promotional examination for the Lieutenant position.

e. There were two portions of the promotional examination for the Lieutenant position, namely, a written portion and an oral portion.

f. Twenty-six out of forty-three Caucasian candidates passed the promotional examination for the Lieutenant position based on their composite score.

g. Six out of nineteen African American candidates passed the promotional examination for the Lieutenant position based on their composite score.

h. Three out of fifteen Hispanic candidates passed the promotional examination for the Lieutenant position based on their composite score.

24. I believe that the certification of the results of these tests would have had significant discriminatory effects in the future since the candidates promoted as a result of these tests would be eligible to sit for future promotional exams and continue the advancement of their careers in the New Haven Department of Fire Services.

25. My decisions and actions regarding this issue were made in good faith, and were based solely on my concerns with compliance with Federal Civil Rights Law, the City Charter, and Civil Service Rules.

26. The Preamble of the New Haven Charter provides that "it is the public policy of the City of New Haven to ensure full and equitable participation of all citizens in all aspects of the life of the city without regard to race. . . ."

27. The paragraph entitled Discrimination-Prohibitions under Rule II of the Civil Service Rules prohibits racial discrimination.

28. Article XX, section 20.1 of the relevant collective bargaining agreement (namely, The Agreement Between City of New Haven and New Haven Fire Union, Local 825 International Association of Fire Fighters, AFL-CIO, dated July 1, 2002 – June 30, 2006) prohibits racial discrimination.

29. The Civil Service Board never certified an eligibility list from either of the subject examinations, and no one was promoted as a result of the subject examinations.

30. I am the only person who had access to information identifying candidates on the subject lists, and I never disclosed any candidate's score to anyone prior to the Civil Service Commission meeting in March 2004.

/s/ Neolia Marcano
Noelia Marcano

Subscribed and sworn to before me this 2nd day November, 2005.

/s/ [Illegible]
Commissioner of the
Superior Court
~~Notary Public~~
~~My Commission Expires:~~